Privy Council Appeal No. 72 of 1914.

The Minister for Lands - - - - - *Appellant,*

v.

George Coote - - - - - - *Respondent.*

FROM

THE SUPREME COURT OF NEW SOUTH WALES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 25TH FEBRUARY 1915.

Present at the Hearing:

LORD DUNEDIN. SIR GEORGE FARWELL.
LORD SHAW. SIR ARTHUR CHANNELL.

[*Delivered by* LORD DUNEDIN.]

This is an appeal by the Minister for Lands in New South Wales against the judgment of the Supreme Court of New South Wales given on a special case stated by the Land Appeal Court. The circumstances out of which the matter arises are as follows. On 14th February 1901 one Henry Wilkinson applied for a homestead selection of a plot of land situated in the land district of Tamworth, which was duly confirmed on the 11th March following, and on the 25th August 1906 a homestead grant was issued in respect of the said selection. On 21st January 1908 the homestead grant was transferred by Wilkinson to one Marshall, and was by him transferred to the respondent George Coote on 15th August 1910. On 7th January 1911 the respondent applied under the provisions of the Crown Lands (Amendment) Act, 1908, to convert the said

homestead grant into an original conditional purchase, and the application was confirmed on the 8th March following. On 16th April 1913 the respondent applied to the Local Land Board for a certificate that all the conditions applicable to the said conditional purchase, except payment of the balance of the purchase money, had been fulfilled, and the Board directed that such certificate should be issued to him. In so doing they considered it proved that Wilkinson, Marshall, and the respondent had all been in residence on the land during their successive terms of occupation. The Minister for Lands referred the determination of the Local Land Board to the Land Appeal Court for re-hearing and further consideration, upon the ground that the respondent was not entitled to have the said certificate issued to him, inasmuch as he had not fulfilled the condition of residence in respect of conditional purchase required by Section 3, Sub-section 3 (*c*) of the Crown Lands (Amendment) Act, 1908. The Land Appeal Court dismissed the reference, whereupon the appellant requested the Land Appeal Court to state a case for the decision of the Supreme Court upon certain points of law. The points of law in the case are put in four questions, but only one question, namely question 3, need be noticed, as an answer to that question virtually answers all the others. The said question 3 was as follows :—

"Whether for the purpose of the provision for the "reduction of residence in Section 3 of the Crown Lands "(Amendment) Act, 1908, the term 'applicant' includes "predecessors in title by successive transfers of the person "who actually applies for the conversion under the said "Act?"

The Court answered the question in the affirmative, and dismissed the appeal, holding themselves bound by the decision of the High Court of Australia in the case of *Walsh* v.

Alexander (16 C. L. R., page 293), and giving no further reasons. The case of *Walsh* v. *Alexander* did not of necessity raise the question of the proper interpretation of Section 3 of the Act cited. It was an action for specific performance of a contract, and judgment in favour of the plaintiff might have been given or refused without considering the interpretation of that Section. But undoubtedly the learned Judges who decided that case did so upon an interpretation of Section 3, and their Lordships are of opinion that the Court in this case was right in holding itself bound by that decision. The interpretation given in that case is not, however, binding upon their Lordships, and they have been invited by the appellant, the Minister for Lands, in this case to consider whether it is sound. Their Lordships regret that they have not had the benefit of any appearance to support the judgment, but they have very carefully considered the matter on its merits, as the question is an important one, and they put upon the appellant the onus of showing that the interpretation given in *Walsh* v. *Alexander* was wrong.

Conditional land purchase is first dealt with in the Crown Lands Act of 1884 under Part 3 of that Act. The general scheme of conditional purchase is to give an approved applicant possession of the holding for which he applies, and to allow him to pay for the land by instalments. It is not necessary to recite at length the various sections which prescribe the methods which are necessary to be employed in order that a person may obtain a conditional purchase. After laying down conditions as to what lands may be applied for and who may apply, Section 32 provides as follows :—

" Every original conditional purchaser under this Act " shall within three months from the date of confirmation

" of his application by the Local Land Board commence and " thereafter continue to reside on his conditionally purchased " land for the term of five years from such date."

And Section 36 :

"If at the expiration of the prescribed term of residence " the Local Land Board shall be satisfied after due enquiry " that all conditions applicable to a conditional purchase, " except that of payment of the balance of instalments, have " been duly complied with, such Board shall issue a certificate " to that effect."

By the Crown Lands Act of 1895, Part 4, Section 29, the condition of residence was for all grants after its date increased to 10 years, and it was provided, Sub-section (*c*),

"That the Local Government Board shall hold en- " quiries after the expiration of 5 and 10 years from the " date of the application whether all conditions applicable " to the conditional purchase, except payment of balance " of instalments have so far been duly complied with, and " if the Board be satisfied of such compliance it shall issue " certificates to that effect."

And (*d*)

"The conditional purchase may be transferred at any " time after the issue of the first certificate, and shall not " be transferred before the issue thereof, and the grant shall " not be issued before the issue of the second certificate."

So far the purchase scheme. But by Part 3 of the same Act of 1895 provisions were made for applications for homestead selections to be afterwards converted into homestead grants. By Section 15 certain conditions applicable to all grants are set forth, of which one is as follows :—

(*c*) "He (that is the applicant) shall within three " months after the confirmation of his application com- " mence to live upon the homestead selection, and shall " continue to have his home and place of abode there until " the issue of the grant."

And then by Section 17, which provides for the issue of the grant, it is provided that a homestead grant shall contain provisions for (*a*) the payment by the grantee, his heirs and assigns, of a perpetual rent, and (*b*) the performance by the grantee, his heirs and assigns for ever, of an

obligation to live upon the homestead selection, being his or their home or place of abode, to which there is added a forfeiture if these conditions are not complied with.

These two tenures are therefore quite definite tenures. The latter is a perpetual occupation lease, residence being of the essence of the right whether the lands are in the hands of the original holder or of his successors; the former is a method of acquiring property, residence for a certain time being a condition of the acquisition, to cease as the condition is performed, and never affecting the original holder after once complied with, or the transferees in whom after compliance the property may become vested by the transferors.

Then comes the Crown Lands (Amendment) Act of 1908, and this for the first time provided means for the conversion of a homestead grant into a conditional purchase. This is effected by the provisions of Section 3, Sub-section 3 of which is as follows:—

"The conditional purchase . . . shall be subject "(*b*) to the general provisions of the principal Acts relating "to the class of holding into which the homestead selection "or grant is converted, except that (*c*) the term of residence "shall commence on the date of the Board's confirmation of "the conversion, but shall be reduced by the period during "which continuous residence has been performed by the "applicant upon the homestead selection or grant up to and "immediately preceding the date of such confirmation."

In their Lordships' opinion this section is clear and unambiguous. It begins by subjecting the person who wishes to convert to the usual condition which affects anyone who obtains a conditional purchase, to wit, 10 years' residence, but this condition is so to speak alleviated by permitting a certain deduction. That deduction is of the continuous residence which has been performed by the applicant. Now the applicant can only mean the man who applies, and with

deference to the learned Judges who decided otherwise, their Lordships think it is impossible to find room for any construction of the word, except its natural meaning. In particular it is quite inadmissible to argue that because in the Act of 1895 certain provisions applied to the transferees of the original applicant for a homestead grant as well as to the original applicant himself, it follows that the word "applicant" in Section 3 of the Act of 1908 must include the predecessors in title of him who makes the application. A simple answer to this argument is that the applicant in one case is the applicant for one thing, and the applicant in the other case is the applicant for another, and that the fact that in one sort of tenure conditions imposed on one sort of applicant are continued upon his transferees does not lead to any logical conclusion that conditions imposed upon the applicant for another sort of tenure may be held as fulfilled by the performance by those who were transferors in a tenure which he is applying to abandon. With the policy of the Statutes their Lordships have no concern. The words are so plain as not to admit of any interpretation save the natural meaning, and consequently a residence performed by the applicant must, in their Lordships' judgment, mean residence by the man who applies for the conversion, and not by any one else. If this result is contrary to an enlightened policy—a point on which their Lordships neither express nor form an opinion—it is easy indeed for the Legislature to change it by amending the section in question.

Their Lordships are, therefore, of opinion that the Appeal should be allowed, and the questions in the special case answered in the negative. The respondent should repay any

costs paid to him under the order of the Court below. As this is a test case of general importance, their Lordships are of opinion that no costs should be given to either party in the Court below, and there will be no costs of this appeal. And their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

THE MINISTER FOR LANDS

v.

GEORGE COOTE.

DELIVERED BY LORD DUNEDIN.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1915.