[HIGH COURT OF AUSTRALIA.]

MARSH . . . . . APPELLANT;
PLAINTIFF,

AND

WILLIAMS . . . . . RESPONDENT.
NOMINAL DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1907.

SYDNEY, *April* 17, 18.

Griffith C.J., O'Connor, Isaacs and Higgins JJ.

Crown Lands Act 1884 (*N.S.W.*) (48 *Vict. No.* 18), *sec.* 47, *sub-sec.* (iii.)—*Non-residential conditional purchase — Price to be paid by applicant — Construction.*

By the provisions of secs. 26 and 35 of the *Crown Lands Act* 1884 the applicant for a conditional purchase under that Act must pay to the Crown Lands Agent a deposit of two shillings per acre with his application, and, if his application is confirmed by the Land Board, must, at the expiration of three years from its confirmation, pay an instalment on the purchase at the rate of one shilling per acre and "a like instalment annually during a period and until the balance of seventeen shillings per acre together with interest" is paid. Certain conditions, including that of residence by the applicant, are attached to conditional purchases in general. Sec. 47 provides that Crown lands open to conditional purchase may be applied for and held without conditions of residence, but subject to more onerous conditions and of a lesser area than in the case of ordinary conditional purchases; and by sub-sec. (iii.) "the deposit and all subsequent instalments shall be double those respectively prescribed on ordinary conditional purchases and shall be paid to the like persons and at the like periods."

Held, that, though regarded by themselves, the words of sub-sec. (iii.) were capable of meaning that the total price was to be the same as in the case of ordinary conditional purchases, the deposits and instalments being merely doubled in amount, and the period over which the latter extended thereby

H. C. OF A. 1907.

MARSH v. WILLIAMS.

shortened, the intention of the legislature, plainly expressed on the face of the Statute, to discourage rather than to encourage conditional purchases without residence, justified the Court in following the decision of the Supreme Court in *Walker* v. *Walker*, (1901) 1 S.R. (N.S.W.), 70, and in construing the sub-section as imposing an obligation upon applicants for such holdings to pay the same number of periodical instalments as would be necessary in the case of conditionally purchased land subject to the condition of residence, and at corresponding intervals, and, therefore, in the end, to pay double the price.

Decision of the Supreme Court, 22nd October 1906, affirmed.

APPEAL from a decision of the Supreme Court of New South Wales.

The appellant sued the respondent, as nominal defendant on behalf of the Government of New South Wales, to recover £446 1s. 6d., being the amount alleged to have been paid by him in excess of the proper amount chargeable under the *Crown Lands Act* 1884 in respect of a non-residential conditional purchase. The land out of which the area applied for was selected was proclaimed as a special area under sec. 24 of the Act, and the prices fixed for conditional purchases were £1 10s. per acre, deposit 3s. per acre for residential, and double those amounts for non-residential conditional purchases. The appellant contended that there was no power under sec. 47 of the Act to make the price of non-residential conditional purchases higher than that of residential for the same area, and therefore, having paid at the rate of £3 per acre, he claimed to be entitled to recover the excess over £1 10s. with interest.

The action was tried by *Pring* J., without a jury, who found a verdict for the defendant.

On motion for a new trial the decision of *Pring* J. was affirmed by the Full Court, following their previous decision in *Walker* v. *Walker* (1).

From the Supreme Court the appellant now appealed to the High Court.

The material sections of the *Crown Lands Act* are sufficiently set out in the judgment of *Griffith* C.J.

Dr. Cullen K.C. and *Pike* (*Boyce* with them), for the appellant.

(1) (1901) 1 S.R. (N.S.W.), 70.

The Act of 1889 having amended sec. 47 sub-sec. (iii.) by the addition of the word "price," must be taken as an indication that before that word was inserted the sub-section meant something different from what it means now. An amending Act is intended, *primâ facie*, to alter the law, not to declare it: *The Queen* v. *Buttle* (1). [They referred also to *Walker* v. *Walker* (2).]

C. B. Stephen K.C. and *Delohery*, for the respondent, were not called upon.

GRIFFITH C.J. This is an appeal from a decision of the Supreme Court, in which the question is raised whether under the *Crown Lands Act* 1884, before the amendment of 1889, conditional purchasers acquiring land without the condition of residence were bound to pay an increased price per acre for the land.

Since 1889 no such question can arise, because in that year an Act was passed which puts an end to all doubt. The question depends upon the words of sec. 47, sub-sec. (iii.), of the Act of 1884, but before reading that sub-section it will be convenient to refer to two earlier sections.

The scheme of conditional purchases prescribed by the Act is well known in New South Wales. The purchaser was allowed to make application for the area of land he desired, and the payment was made by instalments, various conditions being attached before the purchaser was entitled to the grant.

Sec. 26 provides that applications for conditional purchases shall be made in a prescribed manner, and that with the application there shall be lodged with the Land Agent a deposit at the rate of two shillings per acre of the area applied for. Then the application comes before the local Land Board for confirmation.

Sec. 35 provides that every conditional purchaser at the end of the third year after the date of the confirmation of his application, or within three months thereafter, shall pay to the Land Agent an instalment on his purchase at the rate of one shilling per acre, and thereafter shall pay in like manner a like instalment annually until the balance of seventeen shillings per acre, together

(1) L.R. 1 C.C.R., 248. (2) (1901) 1 S.R. (N.S.W.), 70.

H. C. OF A. 1907.

MARSH v. WILLIAMS.

Griffith C.J.

with interest, shall have been paid. The absolute price at which the land is sold is not expressly mentioned, but it seems to have been taken for granted that the price of country land was to be twenty shillings per acre. That is the necessary inference from the fact that a balance of seventeen shillings remains after payment of the deposit of two shillings and the first instalment of one shilling. Under ordinary circumstances, therefore, the price of the land conditionally purchased was twenty shillings per acre.

Referring now to sec. 24, it bears indications of having been inserted at a later stage of the Bill. It provides that the Governor in Council may by proclamation reserve what are called special areas within which it will not be lawful to purchase conditionally more than one hundred and sixty acres (the ordinary area being larger), and at such prices, (not being less than thirty shillings per acre), deposits and instalments as shall be notified in the proclamation.

Now I come to sec. 47, which provides that Crown lands open to conditional purchase may be purchased without conditions of residence, subject to certain qualifications, of which I will refer to the following: first, the maximum area is limited to three hundred and twenty acres; second, a person who takes advantage of this provision shall not be allowed to take up another conditional purchase under the Act, and a person who has made a conditional purchase under any of the Crown Lands Acts may not take up or hold one under this section. Onerous conditions of improvement are imposed, more onerous than those imposed in other cases, and then comes the provision out of which arises the question we have to determine. Sub-sec. (iii.) is as follows:— "The deposit and all subsequent instalments shall be double those respectively prescribed on ordinary conditional purchases and shall be paid to the like persons at the like periods." The question is, what is meant by "the like periods." For the Crown it is contended that these words are equivalent to saying "by the like or by corresponding periodical payments," meaning that the number of payments is to be the same but the amounts are to be double. For the appellant it is contended that it means merely what it says, that the deposit shall be double, and that each of the subsequent instalments shall be double. If it is not

a special area the deposit will be four shillings, and the instalments two shillings per acre, and that will be continued until the total amount of £1 per acre has been paid.

The words are probably capable of both constructions. The deposit and instalments together make up the price. It is not expressly stated that the price shall be double, but the deposit is to be double, and the instalments are "to be paid to the like persons at the like periods." Bearing in mind the intention of the legislature, plainly expressed on the face of the Statute, that residence—actual occupation of the land by a resident occupier—was in their minds, and that they were disposed rather to discourage than to encourage purchasers of country land who were not prepared to live upon it, the inference should, I think, be drawn that, *primâ facie*, it was not intended to grant them any favour not expressly stated. On the other hand, a burden cannot be imposed except by clear words.

I have come to the conclusion that the words "at the like periods" mean by the same number of periodical payments, that is, double the money, and that these periodical payments will continue just as long as they would have continued if they had been made at the ordinary rate. The result is that in the end double price must be paid. That has been the contention of the Crown, and it has been held by the Supreme Court in the case of *Walker* v. *Walker* (1) to be the right view, and I do not see any reason to dissent from that conclusion.

The appeal must therefore be dismissed.

O'CONNOR J., ISAACS J., and HIGGINS J. concurred.

Appeal dismissed with costs.

Solicitor, for the appellant, *J. Robinson* (Forbes), by *S. M. Raff.*

Solicitor, for the respondent, *The Crown Solicitor of New South Wales.*

C. A. W.

(1) (1901) S.R. (N.S.W.), 70.