

## [HIGH COURT OF AUSTRALIA.]

MINISTER FOR LANDS . . . . . APPELLANT;

AND

CHARLES BINNIE . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF  
NEW SOUTH WALES.

*Crown Lands Act 1895 (N.S.W.), sec. 35—Crown Lands (Amendment) Act 1908 (N.S.W.), sec. 40—Re-appraisalment of rent of conditional lessee—Reference by the Minister to the Land Board—Reference sent by Minister to district surveyor—Jurisdiction of Land Board—Power to review finding of fact by inferior Court as foundation for its exercise of jurisdiction.*

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SYDNEY,

March 27.

Griffith C.J.  
Barton and  
Isaacs JJ.

Section 35 of the *Crown Lands Act 1895* provides for the re-appraisalment by a Land Board of the rent payable by a conditional lessee, after the first 15 years of the lease, on a reference by the Minister to the Board. The Minister signed a document stating that in pursuance of the provisions of this section he referred to the local Land Board a certain conditional lease for re-appraisalment of the rent. This document was sent by the Under-Secretary for Lands to the District Surveyor on 25th August 1906, and was retained by him until 23rd May 1909, when it was submitted by him to the Chairman of the Land Board, accompanied by a report. The District Surveyor acted independently of the Land Board in any action he took prior to May 1909, and neither the Chairman nor the Board saw the document sent to the District Surveyor prior to May 1909. An appraisalment of the rent was made by the Land Board and confirmed by the Land Appeal Court.

*Held*, that the transmission of the document on 25th August 1906 by the Minister to his own officer, the District Surveyor, was not a reference to the Land Board, that there had been no reference before the commencement of the *Crown Lands (Amendment) Act 1908*, sec. 40, that the reference, if any, was therefore out of time, and that the Board had no jurisdiction to make the appraisalment.

Special leave to appeal from the decision of the Supreme Court: *In re Binnie*, 28 W.N. (N.S.W.), 6, refused.

APPLICATION by the Minister for Lands for special leave to appeal



H. C. OF A. from the decision of the Full Court upon the hearing of a special  
 1911. case stated by the Land Appeal Court, under sec. 8 (6) of the  
 { *Crown Lands Act* of 1889 : *In re Binnie* (1).

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The case stated was as follows :—

1. On 11th March 1906 the appellant (the respondent in the present appeal) was and still is the holder of conditional lease No. 19472 in the land district of Murrurundi in the Eastern Division, comprising 88 acres 2 roods.

2. On the said day the first period of fifteen years of the said conditional lease expired.

3. On 25th August 1906 the Minister for Lands, in response to a suggestion by the District Surveyor at Tamworth, signed a document in the words following :—

“ Department of Lands,  
 Sydney, 25th August 1906.

In pursuance of the provisions of sec. 35 of the *Crown Lands Act* 1895 the Minister for Lands refers to the Local Land Board at Murrurundi the conditional lease quoted in the margin for appraisalment of the annual rent for the period succeeding the expiration of the first period of fifteen years of the lease in accordance with the terms of the said section.”

4. This letter was on the same day sent by the Under Secretary for Lands to the District Surveyor, Tamworth, accompanied by a letter signed by the Under Secretary in the words following :—

“ Department of Lands,  
 Sydney, 25th August 1906.

Sir,—With reference to your B. C. communication of 8th August 1906 recommending that authority be given for the re-appraisalment of the annual rentals of thirty-five conditional leases in the land district of Murrurundi, I am directed to forward herewith thirty-five ‘References’ by the Minister for Lands for re-appraisalment of the annual rentals for the periods succeeding the expiration of the first periods of fifteen years of the conditional leases referred to in accordance with the provisions of sec. 35 of the *Crown Lands Act* 1895.

The District Surveyor,  
 Tamworth.”



5. The document referred to in paragraph 3 hereof was received from the Under Secretary for Lands on 29th August 1906 by the District Surveyor, Tamworth, who on that date directed instructions to be issued to a staff officer to inspect the land and report. This officer did not inspect and report, but on 23rd July 1908 another surveyor made an inspection of the land, and subsequently forwarded to the District Surveyor a report, dated 1st August 1908.

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6. The document referred to in paragraph 3 hereof was retained by the District Surveyor until 23rd May 1909, when it was submitted to the Chairman of the local Land Board Murrurundi (the case being then ripe for Board action on behalf of the Crown), accompanied by a letter or report from the said District Surveyor in the words following :—

“ Appraisement under sec. 35, *Crown Lands Act* of 1895.

District Surveyor's Report.

Appraisement of Second Period of Conditional Lease.

From 12th March 1906 to 11th March 1910.

Conditional Lease 19472 Land District of Murrurundi. Lessee Charles Binnie 88½ acres Parish of Springfield, County of Pottinger. Present rent 1½d. per acre. Lease commenced 12th March 1891.

In response to the Minister's reference of 25th August 1906 herewith an inspection of the lease above mentioned has now been made, and the papers are forwarded to the Chairman for appraisement of the period stated.

From the information supplied by the Inspecting Surveyor's report enclosed, I recommend that the rent be determined at 3s. 4d. per acre per annum.

To the Chairman of the

Murrurundi Land Board.”

On 1st May 1909 the District Surveyor informed the Chairman of the Land Board that the case was ready for Board action.

6A. The District Surveyor was quite unhampered by and acted independently of the Chairman of the Board and of the Board in any action he took prior to 3rd May 1909, and neither the Board nor the Chairman of the Board saw the document mentioned in paragraph 3 hereof prior to May 1909.

7. The district surveyor at Tamworth is an officer of the Lands



H. C. OF A. Department, and in charge of local administrative arrangements,  
 1911. is the custodian of all official papers having reference to matters  
 coming under the jurisdiction of the Land Boards within his  
 MINISTER district, and has authority to, and does appear for and on behalf  
 FOR LANDS of the Minister for Lands before Land Boards in the district in  
 v. cases in which the Crown is interested.  
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8. On 26th, 27th and 28th May 1909 the matter of the appraisalment of the rent for the second period of the lease was dealt with by the Board, and on the said 28th May 1909 the rent was appraised by the Board at threepence per acre.

9. At the hearing before the Board the District Surveyor, Tamworth, by his deputy Mr. Surveyor Hitchins, appeared on behalf of the Minister for Lands in support of a rental of 3s. 4d. per acre (which was opposed by the appellant lessee), and examined the Crown witnesses, cross-examined the lessee's witnesses, and addressed the Board in support of the rental recommended by the District Surveyor.

10. The appellant duly appealed to the Land Appeal Court from the decision of the Land Board upon (*inter alia*) the following grounds:—

2. That the reference is out of time as it was not made until on or after 3rd May 1909, that being the date it was transmitted to the Chairman of the Murrurundi Land Board, or at the earliest on 1st May 1909 when this case was reported as ready for Board action by the Acting District Surveyor, because up to that time it had been held by the District Surveyor not as Registrar of the Land Board, but as executive officer of the Minister.

3. That no reference by the Minister for an appraisalment has been made within the meaning of sec. 35 of the *Crown Lands Act* 1895 read in conjunction with sec. 40 of the *Crown Lands (Amendment) Act* 1908.

11. On 20th December 1909 the Land Appeal Court dismissed the appeal on the second and third grounds, holding that the reference was sufficiently made when signed by the Minister for Lands and forwarded to the District Surveyor at Tamworth.

12. The Land Appeal Court has been duly requested to state and submit a case for the decision of the Supreme Court on the following questions of law.



1. Was the reference to the Murrurundi Land Board duly made within the meaning of sec. 35 of the *Crown Lands Act* 1895, when the document referred to in paragraph 3 was signed by the Minister for Lands, and transmitted to and received by the District Surveyor at Tamworth?

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2. In the circumstances explained, has the reference by the Minister for Lands to the Land Board to be regarded as having been made after the commencement of the *Crown Lands (Amendment) Act* 1908, which came into force on 1st February 1909?

After argument the case was referred back to the Land Appeal Court by the Supreme Court with a direction to state specifically the relation of the District Surveyor to the local Land Board, and as to whether he was an officer of such Board. In answer to this direction the Land Appeal Court forwarded the following statement:—

“The Land Appeal Court on the evidence before it when the appeal was heard finds that the District Surveyor is not an official of the Land Board. The District Surveyor, in addition to his duties under the *Crown Lands Act*, is the responsible officer of the Lands Department in charge of local administrative arrangements, such arrangements having at one time been in the hands of the Chairman (and officers under him), but transferred to the District Surveyor about the beginning of 1905. All preliminary correspondence connected with the holding of Land Board sittings is carried on by the District Surveyor. The Chairman lists cases for hearing in which the District Surveyor has informed him that they will be ready for hearing by the time the sitting takes place. The District Surveyor gazettes the date of sitting and gives notices to the parties interested. All papers addressed to the Board are received by the District Surveyor on behalf of the Board, he acts as custodian of all papers addressed to the Board, and he is responsible for the custody of all references by the Minister, and applications by the public or applications or papers of any kind which have to come before the Board.”

The Supreme Court, after further argument, answered the first question submitted in the negative, and the second question in the affirmative. The Court held that there was no finding of fact by the Land Board that the document transmitted by the



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Minister for Lands to the District Surveyor was received by him as a person representing the Land Board. No authority had been cited which would entitle the Minister for Lands, who was one of the litigants, to bind his adversary by a notice transmitted to his own officer, and not to the tribunal, or to any officer of the tribunal whose jurisdiction was being invoked. It was obvious that the action of the District Surveyor was entirely based upon a reference issued by the Department of Lands, and was not in fulfilment of any request or application made to him by the Land Board. To successfully rely upon a communication in 1906 between the Minister for Lands and the District Surveyor as binding in any way the rights of other parties to the suggested litigation, would require some very clear authority, either in the Statute or the Regulations made thereunder, or some practice which had been consistently acted upon.

*Hanbury Davies*, for the Minister for Lands. The Land Board held that the document transmitted to the District Surveyor on 25th August 1906 was a reference by the Minister to the Board on that date. They found that the District Surveyor was an officer of the Board to receive the reference. That was a finding of fact which it was competent for the Board to arrive at upon the material before them. This decision has been upheld by the Land Appeal Court. The rent so determined is final and conclusive under sec. 6 of the Act of 1889.

[ISAACS J.—The proceedings must be initiated by a reference to the Board. The only evidence is that the Minister sent a letter to his own officer.]

The Land Appeal Court have stated that “all papers addressed to the Board are received by the District Surveyor on behalf of the Board.”

[GRIFFITH C.J.—That statement refers to letters addressed to the Board. The letter in this case was addressed to the District Surveyor. Your contention must be that the District Surveyor was an officer of the Board, or an agent to receive references on behalf of the Board. There has been no such finding in this case. If there had been, it would be a mixed question of fact and of law, and would be subject to review.]



[ISAACS J.—The reference to the Board is a condition precedent to the exercise of their jurisdiction. They cannot give themselves jurisdiction by a collateral erroneous decision of fact. This is not part of the *res judicanda* as it was in the *Amalgamated Society of Carpenters and Joiners v. Haberfield Proprietary Ltd.* (1).]

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The intention of the Act was that this question should be determined by the Land Board, subject to appeal to the Land Appeal Court, and that the decision of this latter Court as to the rent payable should not be subject to review.

GRIFFITH C.J. We can see no reason for dissenting from the decision of the Supreme Court in this case. The whole point turns upon the question whether the person to whom the document was sent by the Minister for Lands on 25th August 1906 was an officer of the Land Board. The Land Appeal Court seem to have carefully avoided answering the question referred to them by the Supreme Court in such a way as to say that he was. Special leave must be refused.

BARTON J. and ISAACS J. concurred.

*Application refused.*

Solicitor, J. V. Tillett, Crown Solicitor, New South Wales.

(1) 5 C.L.R., 33.