

## [HIGH COURT OF AUSTRALIA.]

PALMER AND OTHERS . . . . . APPELLANTS;  
DEFENDANTS,

AND

RUTTER . . . . . RESPONDENT.  
INFORMANT,

ON APPEAL FROM THE SUPREME COURT OF  
NEW SOUTH WALES.

*Landlord and tenant—Tenancy—Creation of tenancy a breach of trust—Right to recover possession—Landlord and Tenant Act of 1899 (N.S.W.) (No. 18 of 1899), sec. 23.* H. C. OF A.  
1912.

SYDNEY,  
November 25.

A building was erected on land which was vested in trustees upon certain trusts by a Crown grant which contained a provision that, if the trustees should alienate or attempt to alienate the land, whether in fee simple or for any lesser estate or interest, the grant should become void. A building was erected on the land in accordance with the trusts, and a room in it was let to a certain tenant. The Supreme Court of New South Wales having held that possession of the room might be recovered under sec. 23 of the *Landlord and Tenant Act of 1899* :

Griffith C.J.  
Barton and  
Isaacs JJ.

*Held*, that special leave to appeal to the High Court should be refused.

Special leave to appeal from the decision of the Supreme Court of New South Wales : *Ex parte Palmer*, 12 S.R. (N.S.W.), 756, refused.

APPLICATION for special leave to appeal.

An information was exhibited whereby George Rutter, as agent for the Trades and Industrial Hall and Literary Institute Association of Sydney Limited (hereinafter called "the Association") alleged that George C. Palmer and George Entwistle and Frederick

H. C. OF A.  
1912.  
—  
PALMER  
v.  
RUTTER.  
—

W. Hecht, trustees of the Federated House and Ship Painters, Paperhangers and Decorators Employés Association of Australia, New South Wales Branch (hereinafter called the defendants), held from the Association, by virtue of a tenancy from month to month, a room in the Trades Hall, Goulburn Street, Sydney; that the tenancy had been determined by notice to quit, and that the defendants had neglected to quit and deliver up possession; and the informant asked that the Association might be put into possession of the room pursuant to the *Landlord and Tenant Act of 1899*. A summons calling upon the defendants to show cause why the Association should not be put into possession was thereupon issued, and was heard at the Water Police Court, Sydney.

It appeared that the land on which the Trades Hall was erected was granted by the Crown to certain trustees. By the Crown grant it was provided that the trustees should hold and use, or allow the land and the buildings to be erected thereon to be at all times maintained and used, as and for a Trades Hall and Literary Institute, for the use of artificers and operatives of Sydney. It was further provided that, if the trustees should alienate or attempt to alienate the land, whether in fee simple or for any less estate or interest, except by way of transfer to new trustees, the grant should become void and it should be lawful for the Crown to re-enter.

The Association, a limited liability company, was formed, as was stated in the memorandum of association, to erect a Trades Hall on the land for any purposes consistent with the Crown grant. The Association erected the building accordingly. The executive committee of the Association, of which the trustees of the land were *ex officio* members, purported to let the room in question to the defendants at a weekly rental.

After the evidence was heard, a warrant was directed to issue for putting the Association into possession. An order *nisi* for prohibition was obtained by the defendants, and was discharged by the Full Court: *Ex parte Palmer* (1).

The defendants now applied for special leave to appeal to the High Court from that decision.

*Armstrong*, for the defendants. The Association could not create an interest in the land inconsistent with the terms of the grant, and a lease of a room in the building is such an interest.

[GRIFFITH C.J.—The Association are entitled to possession of the room, and the only question is whether the right procedure has been adopted to obtain that possession.]

H. C. OF A.  
1912.  
PALMER  
v.  
RUTTER.

*Per curiam.* Special leave to appeal will be refused.

*Special leave to appeal refused.*

Solicitor, *A. C. Roberts.*

B. L.

[HIGH COURT OF AUSTRALIA.]

GANS . . . . . APPELLANT;  
PLAINTIFF,

AND

RILEY AND OTHERS . . . . . RESPONDENTS.  
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF  
VICTORIA.

*Contract—Rescission—Unconscionable bargain—Evidence.*

In an action to set aside an agreement for a sale of property on the grounds that the price was grossly inadequate, and that it was made under circumstances of oppression almost amounting to actual fraud, judgment was given for the defendants. On appeal to the High Court,

H. C. OF A.  
1913.  
MELBOURNE,  
March 12,  
13.  
Griffith C.J.,  
Barton and  
Isaacs JJ.

*Held*, that the appeal should be dismissed on the ground that the evidence did not establish either that the price was grossly inadequate or that there was fraud, and on the further ground that, as the parties could not be restored *in integrum*, the plaintiff's only remedy would be an action in the nature of