

[HIGH COURT OF AUSTRALIA.]

MINTER APPELLANT;

AND

THE MINISTER FOR LANDS (NEW }
SOUTH WALES) RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

H. C. OF A. *Crown Lands—Settlement lease—Conversion into conditional purchase and conditional lease—Subsequent conversion of conditional lease into additional conditional purchase—Transfer of conditional purchase and additional conditional purchase—Condition of residence by transferee—Crown Lands Act 1889 (N.S.W.) (53 Vict. No. 21), sec. 25*—Crown Lands Act 1895 (N.S.W.) (58 Vict. No. 18), secs. 29*, 30*—Crown Lands (Amendment) Act 1908 (N.S.W.) (No. 30 of 1908), secs. 5*, 6*, 8*, 42—Crown Lands (Amendment) Act 1910 (N.S.W.) (No. 6 of 1910), sec. 9.*

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SYDNEY,

Nov. 15, 16,
17; Dec. 15.

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Isaacs and
Gavan Duffy J.J.

G., the holder of a settlement lease, having continuously resided on it for more than ten years, converted it into a conditional purchase and a conditional lease. In November 1911 G. applied to convert the conditional

*By sec. 25 of the *Crown Lands Act* of 1889 it is provided that the holder of a conditional lease may at any time apply for the whole or part of the land comprised in it as an additional conditional purchase or purchases.

By sec. 29 of the *Crown Lands Act* of 1895 it is provided that the holder of any conditional purchase applied for after the commencement of the Act shall hold the same subject to a condition of personal residence until the expiration of ten years from the date of his application for the conditional purchase. By sec. 30, as amended by the *Crown Lands (Amendment) Act* 1908, it is provided that the condition of resi-

dence “shall attach to every additional conditional purchase or conditional lease applied for after the commencement of this Act. . . . The said condition shall not be taken to have been performed by the performance of the condition of residence which attached to the original conditional purchase, or any prior additional conditional purchase of the same series: Provided always that (a) if the person fulfilling the condition of residence has, up to and immediately before the commencement of the term of such residence, continuously resided upon some purchase or lease of the same series, the term of residence shall

lease into an additional conditional purchase, and his application was confirmed by the Land Board in January 1912. In September 1912 G. duly transferred the conditional purchase and the additional conditional purchase to the appellant.

Held, by Isaacs and Gavan Duffy JJ. (Griffith C.J. dissenting), that the appellant was bound to reside on the additional conditional purchase until the expiration of ten years from the date of G.'s application for it.

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Decision of the Supreme Court of New South Wales : *Minter v. Minister for Lands*, 15 S.R. (N.S.W.), 211, affirmed.

APPEAL from the Supreme Court of New South Wales.

A case, which was as follows, was stated by the Land Appeal Court of New South Wales for the decision of the Supreme Court:—

1. On 19th November 1896 H. F. Good applied for and duly obtained a settlement lease of 1917 acres on which he resided continuously up to the date of his application for the conversion of the said lease referred to in the next paragraph.

2. On 18th November 1910 the said H. F. Good applied to convert the said lease into a conditional purchase and conditional lease under the provisions of the *Crown Lands (Amendment) Act* 1908.

3. On 7th June 1911 the said application was confirmed for an original conditional purchase of 800 acres and a conditional lease of 1,117 acres, the whole of the latter area being defined by the Land Board in accordance with the provisions of sec. 5 of the

be reduced by the period of such continuous residence: Provided nevertheless that if an additional conditional purchase or conditional lease be transferred at any time prior to the expiration of ten years from the date of application therefor the transferee shall perform the condition of residence until such term of ten years expires."

By sec. 5 of the *Crown Lands (Amendment) Act* 1903 it is provided that the holder of a settlement lease "may convert such lease into a conditional purchase or into a conditional purchase and conditional lease"; and the total area which may be so converted either directly or indirectly, into a conditional purchase is limited. By sec. 6 it is provided that "upon conversion of a settlement lease into a conditional purchase or into a condi-

tional purchase and conditional lease as aforesaid any such conditional purchase and conditional lease shall be subject to . . . the general provisions of the Principal Acts relating to conditional purchases and conditional leases except as modified by this Act." By sec. 8 it is provided that "The term of residence in respect of any conditional purchase or conditional purchase and conditional lease into which a settlement lease is converted as aforesaid shall be ten years, but such term of residence shall be reduced by the period of continuous residence performed by the applicant up to and immediately preceding the date of confirmation. The residence term shall commence on the date of the Board's confirmation of the conversion."

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said *Crown Lands (Amendment) Act* 1908 (now sec. 184 of the *Crown Lands Consolidation Act* 1913) as being convertible into additional conditional purchase.

4. On 14th September 1911 a final certificate that all conditions attaching to the original conditional purchase had been duly complied with was issued by the Land Board to the said H. F. Good.

5. On 24th November 1911 the said H. F. Good applied to convert the conditional lease aforesaid into an additional conditional purchase and the said application was confirmed on 29th January 1912 for additional conditional purchase No. 1911/47.

6. On 30th January 1912 the Land Board after inquiry found that all conditions except payment of the balance of purchase money had been duly complied with in respect of additional conditional purchase 1911/47 so far as the (then) present holder H. F. Good was concerned, and directed that a certificate to that effect should issue on form 40B under the *Crown Lands Regulations*.

7. On 12th September 1912 the said original and additional conditional purchases were transferred by the said H. F. Good to the appellant Gordon Kennedy Minter.

8. On 24th November 1914 an application was made by the said Gordon Kennedy Minter to the Grenfell Land Board for the issue of a final certificate that all conditions, except payment of the balance of purchase money, attaching to the said additional conditional purchase had been duly complied with, and the said Board instead of giving a decision referred to the Land Appeal Court for decision two questions, the material one of which was in the terms following:—

Whether in view of the facts and circumstances admitted Gordon Kennedy Minter is entitled to have issued to him a certificate that all conditions except that of payment of balance of instalments have been complied with.

9. The Land Appeal Court held that a ten year term of residence attached to the said additional conditional purchase computed from 24th November 1911 and affects the present holder of the land, Gordon Kennedy Minter, and directed the Land Board accordingly.

10. The appellant has duly required the Land Appeal Court to state a case for the decision of the Supreme Court.

11. The question for the decision of the Supreme Court is:—

In the circumstances stated, is the said additional conditional purchase subject to a ten year term of residence from 24th November 1911 so far as the present holder, Gordon Kennedy Minter, is concerned?

The Supreme Court having answered the question in the affirmative (*Minter v. Minister for Lands* (1)), Minter now appealed to the High Court.

Leverrier K.C. and *Coffey*, for the appellant.

Canaway K.C. and *Hanbury Davies*, for the respondent.

[During argument reference was made to *Slattery v. Williams* (2); *Walsh v. Alexander* (3); *Minister for Lands (N.S.W.) v. Barker* (4); *In re Cameron* (5).]

Cur. adv. vult.

The following judgments were read:—

GRIFFITH C.J. The question for decision in this case is whether a parcel of land held by the appellant from the Crown under the tenure called “conditional purchase” is subject, while so held by him, to a ten years’ term of residence.

I had occasion in the case of *Minister for Lands (N.S.W.) v. Barker* (4) to make a brief exposition of the general nature of the tenure under the New South Wales law called “conditional purchase.” I should add to it that the words of sec. 30 of the Act of 1895, quoted on p. 273, which were repealed by the Act of 1899, were re-enacted by the Act of 1903.

For the purposes of this case it is necessary to refer to some other provisions of the Acts.

By sec. 29 of the Act of 1895 it was enacted that the holder of any conditional purchase applied for after the commencement of

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(1) 15 S.R. (N.S.W.), 211.

(2) 14 S.R. (N.S.W.), 149.

(3) 16 C.L.R., 293, at p. 300.

(4) 19 C.L.R., 267.

(5) 12 S.R. (N.S.W.), 711.

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that Act should hold "the same" (*i.e.*, the land) subject to the condition of personal residence until the expiration of ten years from the date of the application for the conditional purchase. The Local Land Board is required to hold inquiries after the expiration of five years and ten years from that date "whether all conditions applicable to the conditional purchase except payment of balance of instalments have so far been complied with," and, if the Board is satisfied of such compliance, to issue certificates to that effect (proviso (*c*)). At any time after the issue of the first certificate, but not sooner, that is, after the condition of residence has been performed for five years, the conditional purchase may be transferred, but the condition of residence, so far as it is not already performed, must be performed by the transferee or successive transferees. The grant in fee is not to be issued before the issue of the second certificate, that is, after the condition of residence has been wholly performed (proviso (*d*)). In practice a certificate of performance of conditions is the only document of title issued by the Department to a conditional purchaser, and is equivalent in its practical effect to a deed of grant subject to a charge for the unpaid purchase money. By sec. 30 of the same Act it was enacted that the condition of residence should attach to every additional conditional purchase applied for after the commencement of the Act, and should not be taken to have been performed by the performance of the condition of residence which attached to the original conditional purchase to which the additional purchase was an accretion. But this enactment was subject to the proviso (*a*) that "if the person fulfilling the condition of residence has"—the words "up to and immediately" were here inserted by the Act of 1908—"before the commencement of the term of such residence," *i.e.*, the date of his application for the additional conditional purchase, continuously resided upon some purchase or lease of the same series, the term of residence should be reduced by the period during which residence was previously carried on, but not so as in any case to be reduced to less than five years. The section as originally passed proceeded as follows:—"The performance of the aforesaid condition of residence in respect of any additional conditional purchase . . . shall be waived so

long as the person, upon whom the performance of the said condition would for the time being devolve, is the person who applied for the original conditional purchase of the series and for the said additional conditional purchase."

The effect of these provisions is to make the condition of residence and the benefit of the performance of it run with the land. Thus, if the first conditional purchaser, having performed that condition for five years or more, transfers the holding, the residence already performed by him is imputed or credited to the transferee as fully as if he had personally performed it, and so on. It follows, in my opinion, that when the condition of residence for the full term of ten years has once been performed in respect of any land, whether by the original applicant or by successive transferees from him, it is no longer a condition attaching to the land, and cannot be revived except by express enactment of the Legislature.

By the Act of 1908 a proviso, to which I will afterwards refer, was inserted between the original proviso to sec. 30 and the enactment last quoted.

Among other tenures under the Land Acts is that called "settlement lease," which was first created by the same Act of 1895 (sec. 25). The term of the lease was twenty-eight years, afterwards increased to forty, during the whole of which the lessee was required to make the land "his *bonâ fide* residence." He was also required to fence the holding within five years unless excused by the Land Board. The rent was $1\frac{1}{4}$ per cent. of the capital value of the land. The lessee had no right to acquire the fee simple.

The outstanding purpose of all this branch of the land law was to promote actual settlement upon the waste lands of the Crown. This result was sought to be secured by insisting upon conditions of personal residence and improvements. These were the essential conditions, the rest was matter of detail. Identical conditions of residence were imposed under the tenure of conditional purchase and that of settlement lease, except that in the first case the residence was limited to ten years. Conditions of improvement, although not identical, were also imposed under both tenures.

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But there was one great difference. In the one case the performance of the conditions enabled the holder to acquire the fee simple, in the other it did not.

In the year 1908 the Legislature was minded to remove this anomaly. The Act of that year, under which this case arises, accordingly authorizes the holder of a settlement lease to convert his lease into a conditional purchase, or into a conditional purchase and conditional lease (sec. 5), but the total area which may be so converted, either directly or indirectly, into the tenure of conditional purchase is limited (*ib.* (1) (b) (c)). With the application for conversion the applicant must pay a "provisional deposit" of 1s. per acre of the land proposed to be included in a conditional purchase as payment or part payment of a deposit of 5 per cent. of the capital value of the land as afterwards determined (*ib.* (1) (g)). Sec. 6 provides that upon conversion of a settlement lease into a conditional purchase or into a conditional purchase and conditional lease the conditional purchase and conditional lease so acquired "shall be subject to . . . the general provisions" of the Land Acts "relating to conditional purchases and conditional leases except as modified by this Act," and also to other special provisions, to some of which I shall have occasion to advert. The subsequent conversion of the whole or part of the conditional lease into additional conditional purchase was authorized by the general provisions of the Acts (Act of 1889, secs. 25, 26).

Sec. 7 of the Act of 1908 provides that "Upon conversion of a settlement lease into a conditional purchase or into a conditional purchase and a conditional lease the price of the land comprised in such conditional purchase and the price of land comprised in any additional conditional purchase of land within the area of such lease shall be determined" in a prescribed manner. The determination is to be made once for all on the conversion, whether the applicant then applies for the whole as a conditional purchase or not. In determining the value of the land the value of any improvements owned by the applicant and any added value given to the land by reason of any improvements made on the land during the currency of the settlement lease are to be excluded from consideration. That is to say, he gets the benefit

of them. The balance of the purchase money is to be paid by annual instalments of 5 per cent. until the full amount with interest at $2\frac{1}{2}$ per cent. per annum has been paid.

Sec. 8 is as follows:—"The term of residence in respect of any conditional purchase or conditional purchase and conditional lease into which a settlement lease is converted as aforesaid shall be ten years, but such term of residence shall be reduced by the period of continuous residence performed by the applicant up to and immediately preceding the date of confirmation. The residence term shall commence on the date of the Board's confirmation of the conversion." I understand this to mean the term during which residence is required as to any part of the land which may be converted. The condition of residence has, of course, been equally performed in respect of every part of the settlement lease.

The effect of this enactment is that the term of residence, which under the "general provisions" of the Acts would be ten years, is reduced by the period during which the applicant has already resided on the same land under his settlement lease. Thus, if he has already resided for seven years, the term of residence to be performed is three years only. If he has resided for ten years, the obligation of future residence is altogether dispensed with as to the conditional purchase acquired by the applicant. The result is that he is allowed to acquire the fee simple, upon payment of the full price, with long credit for the purchase money, and with the further benefit of having already performed wholly or in part the conditions of residence and of improvement, which, as I have shown, are the essential elements of the tenure of conditional purchase.

On 19th November 1896 one H. F. Good duly obtained a settlement lease of an area of 1,917 acres, on which he resided continuously for more than ten years, namely until 18th November 1910, on which day he made application to convert it into a conditional purchase and conditional lease. On 7th June 1911 his application was confirmed by the Land Board for a conditional purchase of 800 acres and a conditional lease of the balance of 1,117 acres. The Board at the same time (as required by the Act)

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But for the provisions of sec. 8 of the Act of 1908, Good would thereupon have been bound to reside on the conditional purchase for ten years; but by virtue of those provisions residence for the whole period was, as already pointed out, imputed or credited to him, and any further obligation of residence was altogether dispensed with as to the land.

On 14th September 1911, Good having, I presume, performed the condition of improvement either while residing on the land under the settlement lease or afterwards, and having paid the balance of the purchase money, a final certificate was issued by the Board to the effect that all conditions attaching to the conditional purchase had been duly complied with by him, whereupon he became entitled to a grant of the land in fee simple.

On 24th November 1911 Good, taking advantage of sec. 25 of the Act of 1889, applied to convert the conditional lease which he had acquired on 7th June 1911 into an additional conditional purchase.

The application was confirmed by the Land Board on 29th January 1912. The condition of residence for ten years from the date of application, imposed by sec. 29 of the Act of 1895, thereupon, by virtue of sec. 30 of the same Act, attached to the additional conditional purchase so acquired. But by the first proviso to that section that period was reduced by the period during which he had continuously resided upon "some purchase or lease of the same series"—in this case the conditional purchase acquired on 7th June 1911. Further, that condition was waived so far as he was concerned, so long as he held that conditional purchase. And, as residence for the full term of ten years was imputed or credited to him in respect of that conditional purchase, it followed, in my opinion, that it was also imputed or credited to him in respect of the additional conditional purchase. Good had, therefore, at that time already performed in respect of the land all the conditions required of a conditional purchaser except payment of the purchase money, and, possibly, in part, the conditions of improvement, which, however, as will presently appear, he had completely performed by 30th January 1912.

On that day the Land Board, taking this view, directed the issue of a certificate that all conditions except payment of the balance of purchase money had been performed by him in respect of it "so far as the present holder H. F. Good is concerned." Good thereupon became entitled on payment of the balance of the purchase money to a deed of grant in fee simple. The certificate, however, contained a foot-note to the effect that in the event of a transfer the transferee would be required to comply with the condition of residence.

On 12th September 1912 Good duly transferred both the original conditional purchase and the additional conditional purchase to the appellant. The question for determination is whether the appellant was, nevertheless, bound to reside on the additional conditional purchase until the expiration of the full term of ten years from the date of Good's application for it, 24th November 1911, as contended by the respondent and held by the Supreme Court.

If I am right in thinking that the condition of residence on a conditional purchase runs with the land, and, having been once performed, no longer attaches to it, and if I am also right in thinking that the performance of the condition of residence for the full term of ten years had been imputed or credited to Good in respect of the additional conditional purchase, it follows that the foot-note to the certificate was unauthorized, and that the contention of the respondent fails.

One result of accepting it would be that the right, which Good undoubtedly had, to acquire the fee simple on payment of the balance of purchase money, and to transfer the conditional purchase with that right attached to it, was cut down, so that he could no longer transfer it except subject to the condition that his transferee should reside on the land until the expiration of the period of ten years from 24th November 1911, which would be a very substantial reduction of its value to him.

The respondent's contention is based on a proviso to sec. 30 (a) of the Act of 1895, added by the same Act.

Sec. 42 of that Act provided that the several additions, alterations, substitutions, and omissions, set out in a Schedule to the Act should be made in the sections and sub-sections of the Land

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Acts mentioned in the Schedule. The Schedule contained no less than eighty-six amendments to the whole series of Acts, some of them verbal, and others more or less substantial, amongst which was the substitution, in the proviso (a) to sec. 30 of the Act of 1895, for the words "during which residence was previously carried on but not so as in any case to be reduced to less than five years," of the words "of such continuous residence" with a proviso as follows:—"Provided nevertheless that if an additional conditional purchase be transferred at any time prior to the expiration of ten years from the date of application therefor the transferee shall perform the condition of residence until such term of ten years expires."

This proviso is itself a proviso to or qualification of proviso (a) to sec. 30. It deals with the ordinary case where the applicant for an additional conditional purchase is already residing upon an original conditional purchase, and gives him personally the benefit of such residence in respect of the additional conditional purchase (which is an accretion to it) as from the commencement of his own actual residence upon the original conditional purchase, although he has not in fact resided upon the combined holding for ten years from the acquisition of the additional conditional purchase. But, if he transfers the additional conditional purchase, his transferee must himself reside on it for the remainder of that term. In such a case the condition of residence has not been, in fact, fully performed in respect of the additional conditional purchase by the transferor, although he is personally excused from performing it while he holds both conditional purchases as a single property. But the terms of sec. 8 of the Act are that the term of residence in respect of *any* conditional purchase acquired upon conversion of a settlement lease shall be reduced by the period during which the applicant has himself performed the condition of residence, *i.e.*, residence on the same land under the settlement lease. The words of proviso (a) to sec. 30 of the Act of 1895 are apt to confer a merely personal privilege upon a holder of an original conditional purchase who has not himself performed the condition of residence upon the land in question. The words of sec. 8, on the other hand, expressly describe the condition of residence as a condition in

respect of the land itself upon which the applicant has already resided.

In my opinion, the words of the proviso now in question, which are a modification of the general provisions of the Act in respect of additional conditional purchases in general, are not inconsistent with the provisions of sec. 8 of the same Act, which is a further modification, and do not override it.

In my judgment the Act of 1908 contains in its body a complete code as to the rights of holders of settlement leases who take advantage of the provisions of the Act to convert them into conditional purchases. I do not think that it was intended to take away with the one hand (sec. 42 with its eighty-six amendments) what was given with the other (sec. 8), and to deprive a holder who so converted of a most substantial part of the benefit *primâ facie* conferred upon him by reimposing, in the event of a transfer, the condition of residence upon the same land which has already been performed by or imputed or credited to him.

The appellant also submitted a further argument leading to the same conclusion.

If the land comprised in the settlement lease is not wholly converted into a conditional purchase in the first instance, but is converted into a conditional purchase and conditional lease, the Land Board must at the time of the conversion determine what further area may be converted into conditional purchase (sec. 5 (1) (b) (ii.), as amended by the *Crown Lands (Amendment) Act* 1910). The maximum area that may be converted from settlement lease into a conditional purchase, "with or without an additional conditional purchase," must be such that its unimproved value does not exceed £3,000 at the date of the conversion of the settlement lease (*ib.* (c) as amended by the *Crown Lands (Amendment) Act* 1910, sec. 6 (e)). This is the date to which the whole transaction is referred. The words "with or without an additional conditional purchase" manifestly refer to a subsequent conversion of the conditional lease or part of it into a conditional purchase under sec. 25 of the Act of 1889.

A deposit at the rate of 1s. per acre of the area proposed to be included in the conditional purchase acquired in the first instance must be then paid. The cost of any necessary survey or subdivision consequent upon the conversion of the settlement lease,

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and any balance on such deposit is to be paid within a month after demand. But at the applicant's request the survey may be deferred pending the purchase, that is, the taking by way of conditional purchase of land included in a conditional lease granted in pursuance of the conversion (*ib. (h)*). A conditional lease into which land has been converted from settlement lease and an additional conditional purchase made out of the land comprised in such a conditional lease may not be surrendered unless with the Minister's approval, and a forfeiture of either operates as a forfeiture of any conditional purchase held in connection with it (sec. 12). Thus, if a person who has converted his settlement lease into a conditional purchase and conditional lease, after—say—five years' residence, converts the conditional lease into an additional conditional purchase and forfeits the latter for any cause, the original conditional purchase is also forfeited. The solidarity of the transaction could not be more emphatically shown.

For all these reasons I am of opinion that all the conditions and privileges that attach to the original conditional purchase apply also to the additional conditional purchase made out of the conditional lease which accompanies it. The condition of residence under the settlement lease has been, as already pointed out, equally performed with respect to every part of the land comprised in it. When Good acquired the additional conditional purchase he had in fact actually resided upon the land comprised in it for ten years, and, in my opinion, that residence was imputed or credited to him in respect of the additional as well as the original conditional purchase. No distinction can be drawn between them in this respect unless the proviso introduced by the Act of 1908 into sec. 30 of the Act of 1895 is an over-riding enactment.

In my judgment, for the reasons I have given, the provisions relating to conversion of settlement leases are inconsistent with a revival of the condition of residence when it has once been performed by the applicant in respect of the same land.

For these reasons I am of opinion that the condition of residence never attached to the appellant, that the foot-note to Good's certificate was unauthorized and ineffectual, and that the appeal should be allowed.

ISAACS J. This case, which has been well argued on both sides, turns on the meaning of sec. 8 of the Act of 1908.

The appellant can succeed only if he supports one at least of two propositions: (1) that the additional conditional purchase of 29th January 1912 is one into which the settlement lease was converted; or (2) that by the conversion of the settlement lease in June 1911 the land itself was entirely freed from the condition of residence, even if the conditional lease then obtained were afterwards itself converted—as it has been—into an additional conditional purchase.

The first proposition, in my opinion, cannot be sustained upon the language of the Statute. By sec. 5 a settlement lease may, according to area and value, be converted either wholly into a conditional purchase, or partly into a conditional purchase and partly into a conditional lease. Those are forms of tenure which require nothing more than designation by the Act of 1908, except so far as the ordinary law is to be modified.

The conversion takes place the instant the application is confirmed by the Land Board, and, says par. (f) of sub-sec. 1 of sec. 5, "On such confirmation the settlement lease shall be deemed to be surrendered to the Crown unless the application for conversion is withdrawn."

Once surrendered, it has ceased to exist in fact and law; and there is no basis left for the argument that there can be thereafter any conversion of the settlement lease.

Reliance was placed on the language of par. (c) of sub-sec. 1 of sec. 5 as amended by the *Crown Lands (Amendment) Act* 1910, which speaks of the "area" being "converted into a conditional purchase with or without an additional conditional purchase," as showing the intention of the Legislature that the conversion of a settlement lease could in law include a posthumous transaction. But, in my opinion, that view is not sustainable, and for several reasons besides the unnatural construction it gives to the words. In the first place, par. (c) speaks of the "area" being converted—not the settlement lease. Next, the value of the converted area is not to exceed £3,000 at the date of conversion of the settlement lease. That in itself sharply distinguishes between the conversion of the area and the conversion of the settlement lease. The appellant's view makes the two indistinguishable.

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There is a real distinction between the two things, because the "area" may be converted from a conditional lease to "an additional conditional purchase or purchases" under sec. 25 of the Act of 1889, and this is the right expressly referred to in sub-sec. (c) of sec. 6 of the Act of 1908.

Further reliance was placed upon the concluding words of par. (h) of sec. 5, sub-sec. 1. They run thus:—"Provided that at the request of applicant such survey may be deferred pending the purchase, in accordance with this Act, of land included in any conditional lease granted in pursuance of a conversion under this section."

But the words "in accordance with this Act" mean, not by virtue or authority of the Act, but in conformity with, that is, not contrary to the provisions of the Act. Sec. 6 and sec. 7 introduce special enactments on the subject of purchasing land held under a conditional lease granted under a settlement conversion, and sec. 5 itself, in par. (c), makes further modification of the ordinary law. Therefore the proviso to par. (h) cannot, as I read it, be held to necessarily extend the conversion of the settlement lease to the next generation of title. I might further add that the proviso itself markedly distinguishes between "a purchase in accordance with this Act" and "a conditional lease granted in pursuance of a conversion under this section."

Again, as the residence term is to commence on the date of the Board's confirmation of the conversion, and there can be but one such date, it is impossible that the term of residence, and, consequently, the modification of it, can apply to a later conditional purchase.

For these reasons, the first proposition is, in my opinion, unsound.

Then, as to the second proposition. The term of residence is fixed by sec. 8 of the Act of 1908 at ten years, but only in respect of "any conditional purchase or conditional purchase and conditional lease into which a settlement lease is converted."

If the first proposition be rejected, as I hold it should be, it necessarily follows that the term of residence expressly mentioned has no reference to any title beyond those directly substituted for the settlement lease. And if the term itself is so restricted, so must be the later words modifying that term.

Any complete freeing of the land from residence condition must rest on the presumption that the ordinary law in that respect is abrogated, and that if the applicant for conversion has already resided ten years, that satisfies all statutory requirements for residential occupation of the land itself. The answer to that is that there is not a word to support that view.

The Act, in sec. 6, expressly declares that upon conversion the conditional purchase and conditional lease shall be subject to the general provisions of the principal Acts relating to conditional purchases and conditional leases, except as modified by that Act.

The effect of that is that, having elected to convert, the selector accepts the substituted titles with the ordinary consequences, save where expressly modified.

One of the modifications, one already adverted to, is that the residence term of ten years, attached to the combined substitution of "conditional purchase and conditional lease," is to commence on the date of confirmation. In this case the applicant Good was entitled to credit for the full period, but there may be cases where that is not so. If the ordinary provisions of sec. 30 of the Act of 1895 were not applicable, it would be impossible to reside on both within the meaning of the term "residence" as defined in sec. 29 of that Act, and without that definition "residence" would be left undefined. That difficulty can only be met if the two substituted titles are regarded as a "series." By sec. 18 of the Act of 1899 "series," when used in connection with conditional purchases and conditional leases, includes the case of an original conditional purchase and a conditional lease made by virtue of such conditional purchase. In the case of conversion of a settlement lease, where a settlement lessee gets a conditional lease, he gets it necessarily because he has applied for a conditional purchase. He must always get a conditional purchase, and may get a conditional lease, but the latter may not inappropriately be said to be by virtue of the conditional purchase, the application for which carries the lease with it, similarly to the provisions of sec. 48 of the Act of 1884. If that be so, sec. 30 of the Act of 1895 enables the residence condition expressed in sec. 8 of the Act of 1908 to be performed, and as

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Parliament should not lightly be regarded as requiring an impossibility, and the construction I have suggested is reasonably open, I am prepared to adopt it. But the effect of the interpretation goes beyond excluding a practical difficulty. It shows that the Legislature had in view the full ordinary operation of sec. 30, and, indeed, of the general code, except where the contrary is provided.

Coming, then, to the ordinary consequences of the Land Acts, one of them not directly authorized by the Act of 1908, but clearly recognized by it, is the conversion of leases into purchases. But along with that consequence is the attendant requirement of compliance with sec. 30 of the Act of 1895, which in express terms attaches a term of residence to the *new* additional conditional purchase not included in sec. 8 of the Act of 1908. That term commences—as per sec. 29 incorporated—with the date of the application for the conditional purchase. The condition is inherent in the purchase. It is reducible in favour of the person fulfilling it to the extent that *he* has continuously resided on some part of the series up to the date of application, and it is waived altogether if the person who would otherwise fulfil it was the applicant for both the original and the additional purchase. Otherwise the inherent conditions must be fulfilled. The previous residence on the land runs with the person, not the land. The appellant, not answering to either description, but being a transferee who, by the section as amended by the Act of 1908, is expressly required to fulfil the residence condition if any part of the term of ten years from the date of the application for the additional conditional purchase remains unexpired, is bound to that fulfilment. The frame of sec. 47 of the Consolidated Act 1913 (No. 7) confirms this view—particularly sub-sec. 4.

In my opinion, therefore, the second proposition is also unsustainable, and the appeal should be dismissed.

GAVAN DUFFY J. The appellant puts his case in two ways. First, he says that the words “conversion of a settlement lease into a conditional purchase or into a conditional purchase and conditional lease as aforesaid” in sec. 6 of the *Crown Lands (Amendment) Act* 1908 extend to and include the operation of

changing such a conditional lease into an additional conditional purchase, and that such an additional conditional purchase is, in the words of sec. 8, "a conditional purchase into which a settlement lease is converted as aforesaid." Next, he says that if they have not got such an extended meaning, still the effect of sec. 8 is to impute residence in respect of the conditional purchase and conditional lease when they are obtained, so that whenever it is sought to change the conditional lease into an additional conditional purchase it can be said that the applicant has "resided on some purchase or lease of the same series."

In my opinion, neither of those contentions can be maintained. The conversion mentioned in sec. 8 is the change of a settlement lease into a conditional purchase or a conditional purchase and conditional lease, and nothing more. The holder of a settlement lease enjoys the benefit of the section when he makes his choice to take a conditional purchase in respect of the whole of the area comprised in the settlement lease, or, alternatively, to take a conditional purchase in respect of part of the area and a conditional lease in respect of the rest. If he adopts the latter alternative he cannot enjoy the benefit a second time when he converts his conditional lease into an additional conditional purchase.

Sec. 8 does not impute residence; on the contrary it excuses or dispenses with it. It does not enact that residence shall be deemed to have taken place; it merely provides that when the holder of a settlement lease exercises his option to convert it into a conditional purchase or a conditional purchase and conditional lease the normal term of ten years' residence to be performed shall be reduced by the period of continuous residence already performed by the applicant up to and immediately preceding the date of confirmation.

Appeal dismissed with costs.

Solicitors, for the appellant, *Minter, Simpson & Co.*

Solicitor, for the respondent, *J. V. Tillett*, Crown Solicitor for New South Wales.

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