[PRIVY COUNCIL.]

THE ATTORNEY-GENERAL FOR NEW SOUTH WALES . . . . . } APPELLANT;

AND

WILLIAMS . . . . . RESPONDENT.

ON APPEAL FROM THE HIGH COURT.

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1915.
Jan. 25.

Crown Lands—Dedication to public use—Public trust—Alteration of use—New South Wales Constitution Act 1855 (18 & 19 *Vict. c.* 54), *sec.* II.

Practice—Parties—Action to enforce right of Crown of United Kingdom—Claims against the Government and Crown Suits Act 1912 (*N.S.W.*) (*No.* 27 *of* 1912), *secs.* 3, 4.

Prior to the New South Wales *Constitution Act* 1855 and up to the year 1900 Government House, Sydney, and the land on which it stands were used by the Crown for a residence for the Sovereign's representative in New South Wales.

Held, that they were not dedicated to the use of the public or appropriated by way of charitable trust in such a way as to confer upon the general community, either of New South Wales or of the United Kingdom, any right against the Crown to have them used for that purpose.

Held, also, that whether the land was or was not "waste land of the Crown" within the meaning of the *Constitution Act* 1855, the Governor with the advice of the Executive Council might, saving the rights of the Crown of the United Kingdom, put the house and land to other uses.

An action having been brought under the provisions of the *Claims against the Government and Crown Suits Act* 1912 by the Attorney-General for New South Wales on the relation of certain persons against a nominal defendant as representing the Government of New South Wales, alleging that the land in question belonged to the King in his Imperial right, and was impressed with

* Present—Viscount Haldane L.C., Lord Shaw, Lord Parker of Waddington, Lord Sumner, and Sir Joshua Williams.

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a trust in favour of the public, either of New South Wales or of the United Kingdom, and claiming a declaration to that effect and a consequent injunction,

Held, that the Attorney-General for New South Wales did not represent the King in his Imperial right, whether as owner or trustee, that such right was the foundation of the suit, and that the non-representation of the Crown in that right was, of itself, fatal to the action.

Decision of the High Court: *Williams* v. *Attorney-General for New South Wales*, 16 C.L.R., 404, affirmed.

APPEAL from the High Court.

This was an appeal by the Attorney-General for New South Wales to the Privy Council from the decision of the High Court: *Williams* v. *Attorney-General for New South Wales* (1).

The judgment of their Lordships was delivered by

LORD SUMNER. Government House, Sydney, stands in extensive grounds on Sydney Harbour, between Sydney Cove and Farm Cove. It was built about seventy years ago, and down to the end of the last century was always used as the official residence of the Governor of New South Wales. It replaced an earlier Governor's residence, the stabling of which alone survives, "consisting of a mass of modern Gothic building"—the Gothic of 1817—"built by Governor Macquarie on a handsome scale." It was built at the instance of the Governor for the time being for the use of himself and his successors. In this sense, and in this only, has it been "appropriated" to the use of the Governors of New South Wales. At no time had members of the public any right to use it. They visited it as His Excellency's guests, or resorted to it on business connected with his office, but it was always his personal residence, and was as private as is possible in the case of a person holding so eminent an office. It was a public building on a public domain only in the sense that the property was in the Crown, and the Crown granted the use of it to a public official.

In 1900, after the passing of the Commonwealth *Constitution Act*, by an arrangement made between the Government of the Commonwealth of Australia and the Government of New South Wales, the house and grounds were occupied by His Excellency

(1) 16 C.L.R., 404.

the Governor-General of the Commonwealth as his Sydney residence, another house at Sydney being provided by the Government of New South Wales as the residence of the Governor of the State. This arrangement was terminated in 1912, and Government House became untenanted. At the end of the year, after some trifling alterations such as the removal of sentry boxes and fences and the provision of notice boards and paths, the grounds were thrown open to the public, the Premier of New South Wales attending and making a public announcement to this effect. No change was made in the house, but the public was admitted to see the ground floor twice a week. For all that appears what was done was temporary and, if the present house of the Governor of the State were disposed of, he might resume residence in the dwelling of so many of his predecessors. In the stables, however, more extensive alterations were decided upon; the buildings were to become a Conservatorium or School of Music.

It was in these circumstances that the appellant, the Attorney-General of New South Wales, on the relation of sundry private persons, filed the present information praying declarations that "the said house and grounds are vested in His Majesty the King, dedicated to the public purpose of a residence for the Sovereign's representative in New South Wales," and that "neither the Governor of New South Wales nor the Governor in Council has power to interfere with or alter the said purpose to which the said house and grounds are dedicated," and asking for an injunction against the defendant (who had been duly nominated under the *Claims against the Government and Crown Suits Act* 1912), as representing the Government of New South Wales, the Ministers, officers, and servants of the Crown, from using the house and grounds otherwise than in accordance with such declarations. The evidence that the Government of New South Wales threatened and intended to act in substantial contravention of such declarations was inconsiderable, but their Lordships do not stay to observe upon this. It satisfied the Supreme Court of New South Wales, which unanimously granted the declarations and the injunction (*Attorney-General* v. *Williams* (1)). The High Court of the

(1) 13 S.R. (N.S.W.), 295.

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Commonwealth unanimously discharged them (*Williams* v. *Attorney-General for New South Wales* (1)). The question to be decided is a question of right; the respondent does not contest that, failing any right, those whom he represents have, in some and a sufficient degree, formed and acted upon an intention not consistent with the terms of the declarations.

The appellant's case originally was that the premises in question had been affected by something in the nature of a declaration of trust. They were said to have been "dedicated to public use," and when it became apparent that the case was not one of dedication in the proper sense of the term, and that no highways across the premises had been dedicated at all, it was said that the grounds of Government House had been "appropriated to the use of the public." This vague term, more consistent with a bare temporary permission or a revocable licence than with anything which could be the foundation of a definite permanent right, became eventually the symbol of something supposed to be in the nature of a charitable trust, and thus it was that the commencement of proceedings in the name of the Attorney-General on behalf of the Crown was justified.

Their Lordships are in entire accord with the High Court of the Commonwealth in thinking that no such case was made out and that no trust was declared and no charity established. It would be superfluous to add to the reasons with which this conclusion was supported in the cogent judgments delivered in the Court below.

It is admitted that the property in the premises in question is vested in the Crown, and thus Courts of law have been asked to pass upon the use which Ministers of the Crown are making of Crown property. No private person, natural or corporate, has any civil right therein, and the complaint is no more private than that which any member of the public may make, on what he deems to be public and patriotic grounds, against the conduct of an administration in relation to what is popularly called "public property." It is evident that the appellant is at once faced with many difficulties, not all of which need to be discussed now. Their Lordships feel, as the High Court of the Common-

(1) 16 C.L.R., 404.

wealth felt, that the action is defectively constituted. The Attorney-General of New South Wales proceeds against a subordinate of his own, the representative defendant above mentioned, but if, as is contended, not only the property but the right of administration of these premises is in the Crown in right of the United Kingdom, no one appears before the Courts to watch its rights or to state whether or no what has been done is or is not authorized or ratified by His Majesty on the advice of his Ministers. This defect, though formal, is grave, for their Lordships cannot in such a matter supply the deficiency by inference, or by information of less than the highest authority. They agree with the High Court that the proceedings as constituted are incompetent, but they agree also that it is better not to dispose of a case which has attracted some public concern, merely on this formal ground.

When first the grounds of Government House were marked out and the house was built, it was by the Governor of New South Wales that they were administered, in correspondence with and under responsibility to the Secretary of State. Accordingly the area of the grounds was diminished from time to time. The house itself was always occupied by the Governor as one of his residences, but under directions from the Secretary of State it might doubtless have been used for other purposes. In due time an Executive Council was established, upon whose advice the Governor performed various executive acts. After the Constitution Act of 1855 came into force, the Executive was the Governor acting upon the advice of Ministers. It has been much questioned whether Government House and its grounds were "waste lands" within 18 & 19 Vict. c. 54, sec. II., so that the management and control of them passed to New South Wales thereby, but in their Lordships' opinion it is not necessary to decide the point. If the premises are "waste lands," there is nothing to show that what has been done has been done otherwise than in the strictest accordance with constitutional usage. Whatever jurisdiction there may be in certain events to consider judicially the effect of ministerial acts when a Governor is not in accord with Ministers, or of a Governor's acts if Ministers have not advised them, no question of invoking such jurisdiction arises here.

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Equally, if Government House remains outside of the operation of 18 & 19 Vict. c. 54, the Governor is entitled to have ministerial assistence both in the way of consultation and of executive action. Their Lordships agree with *Isaacs* J., that "the absence of what has been called 'executive authority' for the determination of Ministers to apply the land to the new purposes" is not material in the present proceedings (1). It cannot be said, saving always the rights of the Crown of the United Kingdom, that anything illegal or even irregular has been done *quâ* the people of New South Wales if the Governor has exercised his authority, as the officer of the Crown, in respect of property held by the Crown in right of the United Kingdom, upon the advice and by the ministration of the Ministry of New South Wales. There is nothing which requires him to act in such a matter by a solitary determination or by his own single effort. Though the personal intervention of the Governor is not shown in the present case, and even if it be assumed that it was absent, the action taken is that of the Executive and is within its competence on either hypothesis as to the construction of the Constitution Act. No question arises of any obligation on the part of the Governor to take or to abide by the advice of the Ministry of New South Wales, assuming the premises in question not to have been waste lands within 18 & 19 Vict. c. 54. It therefore appears to their Lordships that the appellant fails *in limine*, for nothing that has been done is shown to have been *ultra vires* or irregular.

It was, indeed, contended that this property could not be disposed of without some legislative act, and that none such is shown or suggested to have taken place. Their Lordships think that this point, which does not appear to have been raised in the Courts below, has been taken under a misapprehension. The argument refers to permanent dispositions, alienations, or the like. Here, on the evidence, nothing irrevocable has been done. The railings and sentry boxes can be restored, and the public can be excluded from the grounds. The professors can be dispersed from the conservatoire, and the horses brought back to their stables. There may be some disappointment and even discontent, and some expense more or less considerable, but if, when the

(1) 16 C.L.R., 404, at p. 436.

lease of the Governor's present residence expires, it should be decided that he should once more occupy the house of his predecessors, it does not appear that there has been any disposition or irrevocable change to prevent it.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed, and the appellant will pay the costs.

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[HIGH COURT OF AUSTRALIA.]

MASTER BUTCHERS LIMITED . . . APPELLANTS; DEFENDANTS,

AND

G. LAUGHTON & COOMBS LIMITED . RESPONDENTS. PLAINTIFFS,

ON APPEAL FROM THE SUPREME COURT OF SOUTH AUSTRALIA.

H. C. OF A. 1915. MELBOURNE, *March* 25. Griffith C.J., Isaacs, Gavan Duffy and Rich JJ.

Public Health—Sale of diseased animals—Knowledge that animals are diseased—Health Act 1898 (*S.A.*) (61 & 62 *Vict. No.* 711), *secs.* 106*, 109, 111*.

Sec. 109 of the *Health Act* 1898 (S.A.) provides that "no person shall sell, consign, or expose for sale, or supply for food, any diseased animal."

* Sec. 106 of the *Health Act* 1898 provides that "all owners, on discovery that their animals are diseased, shall give written notice to the Local Board, and isolate such animals from all other animals. . . . It shall not be a defence to any prosecution under this section that the owner did not know that the animal was diseased unless he shall also show that it was not practicable to discover such disease by the exercise of reasonable diligence."

Sec. 111 provides that no person shall (*inter alia*) supply to any person the milk of any diseased animal, or allow any person suffering from any infectious disease to milk any cow, and continues: "It shall not be a defence to any prosecution under this section that the owner did not know that the animal was diseased, or that the person was suffering from an infectious disease, unless he shall also show that it was not practicable to discover the fact by the exercise of reasonable diligence."