

[HIGH COURT OF AUSTRALIA.]

MINISTER FOR LANDS (NEW SOUTH WALES)

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APPELLANT;

AND

KING AND OTHERS

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RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF  
NEW SOUTH WALES.

Crown Lands—Settlement lease—Conversion into conditional purchase and conditional lease—Transfer—Consent of Minister—Effect of prior sale of settlement lease without consent—Crown Lands Consolidation Act 1913 (N.S.W.) (No. 7 of 1913), sec. 272.

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Griffith C.J.,  
Barton,  
Isaacs and  
Gavan Duffy JJ.

Sec. 272 (1) of the *Crown Lands Consolidation Act 1913* enacts certain provisions with respect to (*inter alia*) original settlement leases applied for on or after 1st February 1909, and original or additional holdings into which settlement leases have been converted under the *Crown Lands (Amendment) Act 1908*. Sec. 272 (2) provides as follows:—"Application for permission to transfer by way of sale mortgage lease or otherwise any such holding as is hereinbefore mentioned shall be made to the Minister in the prescribed form, and such transfer shall not be effected, or if effected shall not be valid, unless the Minister's consent thereto has been obtained. The Minister shall have discretion to give or refuse such consent, and shall not refuse consent unless he has referred the matter to the local land board, and the local land board recommends that such consent should not be given."

A, the holder of a settlement lease applied for on 1st July 1909, entered into an agreement with B which was in effect an agreement for sale of the lease to B with certain provisions to meet the case of the Minister refusing to consent to a transfer. Part of the purchase money was paid, and the agreement in other respects was partly performed, but no application was made to the Minister for permission to transfer. A, who remained the registered holder of the lease, subsequently, at B's request, converted it into a conditional purchase and conditional lease under the *Crown Lands (Amendment) Act 1908*. B later sold to C. A first certificate of performance of all conditions attaching to such conditional purchase except payment of purchase money issued to A, who then applied for the permission of the Minister to transfer the conditional purchase and conditional lease to C by way of sale, A's object being to give effect to the sale by B to C.



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The Supreme Court of New South Wales held that the proposed transfer was not in contravention of sec. 272 of the *Crown Lands Consolidation Act* 1913, and that it was competent to the land board to recommend the Minister to consent to the proposed transfer.

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

APPLICATION for special leave to appeal.

A case was stated by the Land Appeal Court for the decision of the Supreme Court under sec. 22 (5) of the *Crown Lands Consolidation Act* 1913, in which, so far as material, the facts were as follows :—

On 1st July 1909 the respondent F. King made an application for a settlement lease, which application was confirmed on 20th August 1909. On 2nd August 1910 King and the respondent Robert Lillicrap entered into an agreement by deed, which recited that Lillicrap was desirous of purchasing such settlement lease and King was agreeable to sell it at a certain price, and which contained (*inter alia*) the following clauses :—(1) The said Robert Lillicrap on the signing hereof pays to the said F. King the sum of £500 on account of such purchase money and agrees to pay the balance of £800 when the land is formally transferred. (2) In the meantime until consent of Minister is obtained or definitely refused Robert Lillicrap to pay all Crown rent as payments fall due and including amount now due also second year's instalment of survey fee (£2 13s. 9d.) and continue to pay the other instalments also all rates, &c. (3) The said F. King shall perform all residence on the said land until consent or refusal of Minister to transfer is obtained, application for which shall be made not later than two years from date hereof but as much earlier as thought advisable with chance of success both parties knowing that up to five years the chance of success is probably not as great as afterwards. (4) Should Minister refuse to consent to transfer all moneys paid or expended by Robert Lillicrap (including all payments to Crown) shall be refunded him by F. King less any reasonable deduction for use of land. (5) Robert Lillicrap agrees to improve property during next two years.

The sum of £500 and other sums were duly paid by Lillicrap, under the agreement, to King and to the Crown and others, and



considerable sums were expended by him in improving the land in question. On 6th September 1911 King, at Lillicrap's request, made an application under the *Crown Lands (Amendment) Act* 1908 to convert the lease into a conditional purchase and conditional lease, and the application was confirmed on 16th February 1912. In June 1914 Lillicrap sold the resultant conditional purchase and conditional lease to the respondent J. A. Robertson. On 5th July 1914 a first certificate of the performance of all conditions in respect of the said conditional purchase except payment of balance of purchase money was issued to King. No application was made to the Minister for any consent with reference to the transaction between King and Lillicrap. On 21st April 1915 King, to effectuate the sale from Lillicrap to Robertson, to which sale King was not a party, lodged an application for the permission of the Minister to transfer the said conditional purchase and conditional lease to Robertson by way of sale. It appeared on the face of the application that Robertson was buying from Lillicrap, and that Lillicrap had bought from King.

The Minister referred it to the Land Board to say whether the application should be granted or refused. The Board recommended "that permission to transfer might reasonably be granted." The Minister then referred this recommendation to the Land Appeal Court, which held that the recommendation "should not be disturbed."

On the application of the Minister the Land Appeal Court stated a case for the decision of the Supreme Court, the questions being (1) whether the proposed transfer from F. King to J. A. Robertson (such transfer being direct from the said F. King to the said J. A. Robertson) was, under the circumstances, in contravention of sec. 25 of the *Crown Lands (Amendment) Act* 1908, now sec. 272 of the *Crown Lands Consolidation Act* 1913; (2) whether under the circumstances set forth relating to the resale and the proposed effectuation thereof King was such a proposed transferor or Robertson was such a proposed transferee as are respectively contemplated by Form 129 of the Forms under the *Crown Lands Consolidation Act* 1913; (3) whether it was competent for the Local Land Board to

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recommend the Minister to consent to the said proposed transfer under the circumstances.

The Full Court answered the first question in the negative, and the other questions in the affirmative.

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

*Canaway K.C.* and *Hanbury Davies*, for the appellant. "Transfer" in sec. 272 (2) of the *Crown Lands Consolidation Act 1913* means the process of change of ownership. What took place between King and Lillicrap was one step in that process, and was, and is, by the sub-section rendered not merely void, but absolutely illegal, as the Minister's consent was not obtained. The sale by Lillicrap and the proposed transfer from King to Robertson are simply the outcome of the forbidden transaction between King and Lillicrap, and the transfer would, if sanctioned, give effect to such transaction. Such transfer and the sale by Lillicrap are therefore tainted with the same illegality as the original transaction. Permission to transfer should therefore be refused by the Minister. [Counsel referred to *Roach v. Bickle* (1).]

[The COURT during the course of argument intimated its opinion that sec. 272 (2) did not render a transaction like the present one, not being consented to by the Minister, illegal in the sense that it was punishable or would vitiate any other transaction, but simply rendered it inoperative. No objection could therefore be taken on the ground of illegality to the proposed transfer, which was admitted to be proper in other respects.]

PER CURIAM. Special leave to appeal will be refused.

*Special leave to appeal refused.*

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

C. A. W.