[PRIVY COUNCIL.]

BULL AND OTHERS . . . . . APPELLANTS;
DEFENDANTS,

AND

THE ATTORNEY-GENERAL FOR NEW SOUTH WALES . . . . . } RESPONDENT.
INFORMANT,

ON APPEAL FROM THE HIGH COURT.

Crown Lands—Alienations not authorized by Statute—Whether void or voidable—Improvement leases—Extension—Lease to commence at future date—Crown Lands Act 1884 (*N.S.W.*) (48 *Vict. No.* 18), *secs.* 5, 6—*Crown Lands Act* 1895 (*N.S.W.*) (58 *Vict. No.* 18), *secs.* 26, 44—*Crown Lands Act Amendment Act* 1903 (*N.S.W.*) (*No.* 15 *of* 1903), *sec.* 31.

PRIVY COUNCIL.* 1916. July 14.

Pursuant to sec. 26 of the *Crown Lands Act of* 1895 (N.S.W.) certain improvement leases of Crown lands, each for a term of 12 years, were in December 1898 granted by the Governor to the predecessor of the defendants. In June 1904 the Governor in Council ordered that the terms of the leases should be extended for a period of 16 years from the termination of the original leases respectively, and in pursuance of this order, and in the same month, there was indorsed on each of the original leases what purported to be an improvement lease for the term of 16 years from the termination of the particular original lease. What was done in June 1904 was without any recommendation of the local land board.

Held, that, although the leases granted in June 1904 could not be sustained under the sixth provision of sec. 26 of the *Crown Lands Act of* 1895 and therefore would have been void but for sec. 44 of that Act, the effect of that section was to render them voidable only and not void.

Decision of the High Court: *Bull* v. *Attorney-General for New South Wales*, 17 C.L.R., 370, reversed.

* Lord Buckmaster L.C., Earl Loreburn, Lord Shaw and Sir Arthur Channell.

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BULL v. ATTORNEY-GENERAL FOR NEW SOUTH WALES.

APPEAL from the High Court.

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

The judgment of their Lordships was delivered by

EARL LOREBURN. The controversy in this case arises from the fact that reversionary leases were granted to the appellants. If that was lawful, then this appeal must succeed. If it was unlawful, then the only point left is whether the leases so granted can be treated as voidable under sec. 44 of the Act of 1895, or are wholly void. This Act and the prior Acts to which it refers must be construed in accordance with the ordinary canons of construction. It may be that it would be a hardship to the lessee to declare his lease void, or that it would be against the public interest to condone the grant of reversionary leases without the safeguard of competition. But these things are to be considered by the Government and Legislature of New South Wales. This Board has simply to construe the Acts which have been passed in that State and to advise the Crown as to their true meaning and effect.

The first question is whether or not the reversionary leases were lawfully granted. That depends upon sec. 26 of the Act of 1895. Does that section enable the Crown to grant a renewal of a lease of these lands granted under the Act of 1895? If yes, it must be because of the sixth provision of that section. The language is very difficult. Either this provision is out of place in this section, because it is inconsequential to provide that a lease granted under the Act of 1895 is to be subject to provision that leases granted under prior Acts may be extended. Or the Board must say that, though renewal under this sixth provision is expressly confined to leases granted under an earlier Act, yet it applies also to leases granted under the 1895 Act, and must say so in face of the first provision, which requires that no reversionary lease can be granted under the 1895 Act. That would really be making, not declaring, law. The words appearing in the early part of sec. 26, viz., "the granting of the leases shall be subject to the provisions hereunder contained," do not, in their Lordships' opinion, authorize the

(1) 17 C.L.R., 370.

addition of fresh language to any of the provisions. And if any of them has no application as it stands, it cannot be altered so as to make it apply. Therefore these reversionary leases were not lawful leases, and cannot be sustained under the sixth provision of sec. 26.

The second question is whether or not sec. 44 requires that these reversionary leases shall be treated as voidable instead of being treated as void. This also is a difficult matter, as appears from the difference of opinion it has already evoked.

It appears clear that sec. 44 may apply to these leases by virtue of the last portion of it. "Purchases or leases purporting to be made or granted after the commencement of this Act" include all such purchases or leases. But the Board have still to inquire whether these leases come within the class of those which are declared to be not void, but only voidable.

The seciton says that a lease "shall not be held to be void by reason of any breach or non-observance of the provisions of the said Acts." The Act of 1895 is on the same level with the said Acts by virtue of the last portion of sec. 44. If these leases are (apart from sec. 44) void, as their Lordships think they are, do they become so by virtue of any breach or non-observance of the provisions of the Act of 1895? They are void (apart from the relief now being considered) because they were reversionary leases. One of the provisions of the Act of 1895 (sec. 26, provision 1.) forbids reversionary leases. Therefore these leases were void because of the breach or non-observance of that provision. It is to be observed that both sec. 26 and sec. 44 use the word "provision," in the former case to restrict the power of leasing, in the latter case to excuse what has been wrongly done. The latter section seems to have the former in view. Accordingly, sec. 44 applies to this case, and these leases are voidable, and are not to be held void, though they would have been so but for sec. 44. As these leases, therefore, are made voidable by the 44th section, the procedure enacted by that section for determining whether they shall be avoided or affirmed should be followed, and the information of the Attorney-General asking for a declaration that the leases are void fails.

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Their Lordships will humbly advise His Majesty that the appeal should be allowed, and the information of the Attorney-General of New South Wales dismissed with costs throughout. The respondent will pay the costs of this appeal.

[HIGH COURT OF AUSTRALIA.]

GOLDRING . . . . . APPELLANT;
PLAINTIFF,

AND

THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LIMITED } RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1916.

SYDNEY, *Nov.* 13.

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

Mortgage—Validity—Effect of decree absolute for foreclosure—Estoppel.

In a suit against a mortgagor who had mortgaged reversionary interests in residuary real and personal estate to a company incorporated in 1869 under the Companies Acts in force in Victoria, to secure moneys advanced to her by the company, a decree for foreclosure was made absolute in 1895, and the company subsequently sold the properties mortgaged as absolute owners thereof. In 1915 a suit was instituted in the Supreme Court of New South Wales against the company by the mortgagor, who alleged that the mortgage transactions were *ultra vires* the company and the mortgages, therefore, invalid.

Held, that the mortgagor was estopped by the decree for foreclosure from disputing the validity of the mortgages.

Decision of the Supreme Court of New South Wales affirmed on that ground.