[HIGH COURT OF AUSTRALIA.]

SANDERSON . . . . . APPELLANT;

AND

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

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1924.

SYDNEY, *Mar.* 28.

Knox C.J., Isaacs, Gavan Duffy, Rich and Starke JJ.

Crown Lands—Improvement lease—Homestead selection obtained by holder—Transfer of improvement lease less homestead selection—Right of transferee to apply for homestead selection—Crown Lands Consolidation Act 1913 (*N.S.W.*) (*No.* 7 *of* 1913), *sec.* 193*—*Crown Lands (Amendment) Act* 1917 (*N.S.W.*) (*No.* 27 *of* 1917), *sec.* 4.*

Held, that, where the holder of an improvement lease has, under sec. 193 of the *Crown Lands Consolidation Act* 1913 as amended by sec. 4 of the *Crown Lands (Amendment) Act* 1917, obtained a portion of the land comprised in the lease as a homestead selection, a subsequent holder by transfer of the improvement lease so reduced in area is not entitled under that section to apply for a portion thereof as a homestead selection.

Decision of the Supreme Court of New South Wales (Full Court): *Sanderson* v. *Minister for Lands*, (1923) 23 S.R. (N.S.W.), 524, affirmed.

* Sec. 193 (1) of the *Crown Lands Consolidation Act* 1913, as amended by sec. 4 of the *Crown Lands (Amendment) Act* 1917, provides as follows, so far as is material:—"The holder of . . . any improvement lease, . . . whose dwelling-house may be erected on Crown lands, may, at any time during the last year of the term of the lease, apply for the portion of the leasehold which contains such dwelling-house . . . as a homestead selection, . . . subject to the provisions hereunder specified:—(*a*) The area which may be so applied for shall, before the date of the application for the same, have been improved by the holder of the lease or his predecessors in title with permanent fixed and substantial improvements . . . (*b*) The application shall be made in the prescribed manner, and the applicant shall, as and when prescribed, pay the full cost of survey . . . (*e*) Upon confirmation the land shall be withdrawn from the lease, but the lease shall otherwise continue in full force and effect . . . (*f*) The term of residence shall commence on the date of the confirmation of the homestead selection, but shall be reduced by the period during which continuous residence has been performed on the land by the applicant or his predecessors in title."

APPEAL from the Supreme Court of New South Wales.

On an appeal by Henry Thomas Alexander Sanderson to the Land and Valuation Court from a decision of the Walgett Land Board, his Honor Judge *Pike* stated the following case for the decision of the Supreme Court :—

(1) On 3rd December 1907 an improvement lease, No. 1678, of about 12,580 acres was granted to one Thomas Dent for a term of fifteen years expiring on 2nd December 1922.

(2) On 18th August 1921 one Eliza Ann Newman became registered as the holder of the said lease by transfer from the said Thomas Dent.

(3) On 7th December 1921 the said Eliza Ann Newman applied, under and in pursuance of the provisions of sec. 193 of the *Crown Lands Consolidation Act* 1913, for a homestead selection of 12,580 acres, being the portion of the said lease containing her dwelling-house. The said application was confirmed by the Local Land Board for an area of 6,230 acres on 20th November 1922, the said area of 6,230 acres being determined to be a home maintenance area.

(4) On 20th November 1922, after the said confirmation by the said Board as set out in par. 3 hereof, the said Eliza Ann Newman transferred the said lease so reduced in area to Henry Thomas Alexander Sanderson, the appellant herein.

(5) On 24th November 1922 the appellant applied, under and in pursuance of the provisions of sec. 193 of the said Act, for a homestead selection of the available portion of the said lease which contains his dwelling-house and which said portion would not exceed a home maintenance area under the provisions of the said section of the said Act.

(6) On 1st March 1923 the said application set out in the last preceding paragraph hereof came before the Local Land Board at Walgett for consideration and decision, and was disallowed by the said Board for reasons which are not material for the purposes of this case.

(7) On 20th March 1923 the appellant duly appealed to the Land and Valuation Court against the said decision of the Walgett Land Board.

H. C. OF A. 1924.

SANDERSON v. MINISTER FOR LANDS (N.S.W.).

(8) On 10th April 1923 the said appeal came on for hearing before the Land and Valuation Court, and upon such hearing objection was taken by counsel for the respondent that the appellant was not entitled to make the application referred to in par. 5 inasmuch as one homestead selection had been already obtained by a holder of the improvement lease in question under sec. 193. The Land and Valuation Court upheld the said objection, and thereupon dismissed the said appeal.

(9) The appellant has duly requested the Land and Valuation Court to state and submit a case for the decision of the Supreme Court on the question of law herein arising.

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

Whether the holder by transfer of an improvement lease is entitled to apply for portion of such leasehold as a homestead selection under sec. 193 of the *Crown Lands Consolidation Act* 1913, his predecessor in title having already obtained a homestead selection of a home maintenance area out of the same leasehold under the said section.

The Full Court of the Supreme Court having answered the question in the negative (*Sanderson* v. *Minister for Lands* (1)), Sanderson now appealed to the High Court from that decision.

Windeyer K.C. (with him *Worthington*), for the appellant. Sec. 193 of the *Crown Lands Consolidation Act* is plain in its meaning, and, read literally, gives to the appellant, who is a holder of an improvement lease, on complying with the conditions, a right to apply for a homestead selection. The section draws no distinction between an original holder and a holder by transfer. This view is borne out by sec. 193 (1) (*e*), which provides that " upon confirmation the land " applied for as a homestead selection " shall be withdrawn from the lease, but the lease shall otherwise continue in full force and effect." The word " otherwise " means apart from the withdrawal of the land comprising the homestead selection, and therefore the provision that the holder may apply for a homestead lease continues in force. (See *Higgins* v. *Berry* (2).) The intention of the Legislature is to be drawn from the plain words it has used,

(1) (1923) 23 S.R. (N.S.W.), 524. (2) (1908) 6 C.L.R., 618 at p. 633.

and there is no room for speculation as to what that intention was. [Counsel also referred to *In re Rathbone* (1); *Crown Lands Consolidation Act* 1913, secs. 82, 257, 272 (2), (3).]

Canaway K.C. and *Hanbury Davies*, for the respondent, were not called upon.

The following judgments were delivered :—

KNOX C.J. In this case I think that the decision of the Supreme Court was clearly right, and for the reasons given by *Gordon* J. The appeal should, therefore, be dismissed.

ISAACS J. I also am of opinion that the appeal should be dismissed. The way in which the matter presents itself to me is this :—The Legislature made provision, in sec. 82 for instance, for improvement leases, and a lease when granted binds the lessee in respect of certain land and certain obligations. The Crown also is bound by the lease. When we come to sec. 193 it is part of the policy of the Legislature to enable improvement leases to be modified to a certain extent, that is, by enabling the holder to eliminate from that lease at a certain time and under certain conditions land for what is called a homestead selection. When that is done, the section, by sub-sec. 1, par (*e*), which I agree with Mr. *Windeyer* is the central provision for this case, says : " Upon confirmation the land " (that is, the land of the homestead selection) " shall be withdrawn from the lease "—to that extent the lease is altered—" but the lease shall otherwise continue in full force and effect." To the extent of withdrawing the homestead selection the lease is altered, but it is not to be altered otherwise. That is what I consider to be the meaning of sub-sec. 1 (*e*) of sec. 193. The operation of sec. 193 as to eliminating land from the lease has then been exhausted, and the section itself, by saying that the lease is to be otherwise unaltered, in effect declares that the lease is henceforth to be as it would be under sec. 82. The argument for the appellant would entirely alter that. It would not allow the lease to continue otherwise in full force and effect, but would enable it to be altered repeatedly by allowing other land

(1) (1917) 27 L.C.C. (N.S.W.), 94.

H. C. OF A. 1924.

SANDERSON v. MINISTER FOR LANDS (N.S.W.).

to be eliminated. In my opinion the sub-section has not that effect, but the very opposite, and therefore the decision of the Supreme Court should be affirmed.

GAVAN DUFFY J. I agree that the appeal should be dismissed.

RICH J. I agree.

STARKE J. I agree.

Appeal dismissed with costs.

Solicitors for the appellant, *Biddulph & Salenger.*

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

B.L.