[HIGH COURT OF AUSTRALIA.]

RURAL BANK OF NEW SOUTH WALES . . APPELLANT; DEFENDANT,

AND

THE COUNCIL OF THE SHIRE OF BLAND . RESPONDENT. PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1947.

SYDNEY, *July* 30, *Aug.* 18.

Latham C.J., Rich, Starke, McTiernan and Williams JJ.

Local Government—Land—Ratability—Rates—Assessment—Liability—"Owner"—Statutory body representing the Crown—Mortgagee in possession—Local Government Act 1919-1945 (*N.S.W.*) (*No.* 41 *of* 1919—*No.* 21 *of* 1945), *ss.* 4, 132 (1) (*g*), 144.

The Rural Bank of New South Wales is a statutory body representing the Crown and as mortgagee in possession of certain conditionally purchased land is, in respect of that land, liable to be rated under s. 144 of the *Local Government Act* 1919-1945 (N.S.W.), as owner within the meaning of the Act. Section 132 (1) (*g*) of the *Local Government Act* does not exempt the Bank from such liability.

So *held* by *Rich, Starke, McTiernan* and *Williams* JJ. (*Latham* C.J. dissenting).

Decision of the Supreme Court of New South Wales (Full Court): *Council of the Shire of Bland* v. *Rural Bank of New South Wales*, (1946) 47 S.R. (N.S.W.) 245; 64 W.N. (N.S.W.) 18; 16 L.G.R. (N.S.W.) 75, affirmed.

APPEAL from the Supreme Court of New South Wales.

In an action brought in the District Court of New South Wales by the Council of the Shire of Bland to recover from the Rural Bank of New South Wales the sum of £128 1s. 6d. for rates, arrears of rates and extra charges owing in respect of certain land situate within the shire, and being C.P. 13/12, Portion 10, Parish of Lewes, County Cooper, Land District of Narrandera, the following facts were proved or admitted :—

1. The said land was held by one George Godber as conditionally purchased land under the provisions of the *Crown Lands Consolidation Act* 1913 (N.S.W.) and was transferred by him to the Government Savings Bank of New South Wales by way of mortgage in the year 1927.

2. The name of the said Government Savings Bank of New South Wales was subsequently changed to the " Rural Bank of New South Wales."

3. At all relevant times the Rural Bank of New South Wales was and is the mortgagee in possession of the said land.

4. The Rural Bank of New South Wales is a " statutory body representing the Crown " within the meaning of the *Local Government Act* 1919 (N.S.W.), as amended.

Upon the facts so proved or admitted the District Court Judge held that the land in question was not ratable and found a verdict for the defendant and entered judgment accordingly (*Bland Shire Council* v. *Rural Bank of New South Wales* (1)).

Upon an appeal by way of special case, pursuant to Part VI. of the *District Courts Act* 1912 (N.S.W.), the Full Court of the Supreme Court of New South Wales held that the land was ratable and that the Rural Bank of New South Wales, being a mortgagee in possession of the land, was owner by virtue of par. (*c*) of the definition of the word " Owner " in s. 4 of the *Local Government Act* 1919 (N.S.W.), as amended, and, therefore, was liable to pay rates by virtue of s. 144 of that Act (*Council of the Shire of Bland* v. *Rural Bank of New South Wales* (2)).

From that decision the defendant, by special leave, appealed to the High Court.

The relevant statutory provisions are set forth in the judgments hereunder.

Ferguson K.C. (with him *Emerton*), for the appellant. The appellant is a " statutory body representing the Crown " within the meaning of those words as appearing in s. 4 of the *Local Government Act* 1919. If the land is owned by the Crown within the meaning of pars. (*b*) and (*c*) of the definition of " Owner " in s. 4 of the Act and does not come within the scope and operation of pars. (i) and (ii) of s. 132 (1) (*g*) of the Act, then it comes within the general exception from ratability provided by s. 132 (1) (*g*). It follows from ss. 4, 132 (1) (*g*), 144 and 145 that if the land is owned by the Crown then it is not ratable. If the land is not owned by the Crown then the Crown

(1) (1946) 16 L.G.R. 51.

(2) (1946) 47 S.R. (N.S.W.) 245; 64 W.N. 18; 16 L.G.R. 75.

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is not liable to pay the rates because the rates are payable by the owner. The land is not owned by the Crown at all in any sense. The two parts of the definition of the word " Owner " in s. 4 are mutually exclusive. The first part has nothing whatever to do with the Crown as defined, whereas the proviso is a comprehensive statement of the land of which the Crown shall be deemed to be the owner. The word " person " as used in the first part of the definition is not an apt description of the Crown, and as the Act does not expressly bind the Crown generally it follows, prima facie, that the first part of the definition does not apply to the Crown. The proviso is really an independent substantive provision. The mortgagor of the land is still the owner thereof. The proviso, dealing as it does with the Crown as defined, excludes from par. (*c*) of the first part of the definition the appellant as being the owner by reason of being a mortgagee in possession. Paragraphs (*a*), (*b*) and (*c*) do not refer to the Crown as defined, and as the appellant is the Crown as defined then par. (*c*) does not apply to it. Although the land is ratable the Crown is not liable to pay the rates. The land, not being land " owned by the Crown " does not come within the exception in s. 132 (1) (*g*) and is, therefore, ratable land, but not being the " Owner " thereof the Crown, that is to say the appellant, is not liable under s. 144 in respect of the rates levied in connection therewith. The contention that the Crown is the owner of the land by reason of being the mortgagee in possession thereof is completely answered by s. 132 (1) (*g*) because if the Crown is an owner by reason of the definition of the word " Owner " then the land is excepted from ratability. Land owned by the Crown is ratable only if (i) it is held under a lease from the Crown by any person for private purposes, or (ii) is occupied and used by the Crown in connection with any industrial undertaking. If by virtue of the Crown being a mortgagee in possession the land is deemed to be owned by the Crown it escapes ratability by virtue of s. 132 (1) (*g*). If the definition of " Owner " in s. 4 is used for the purpose of bringing in the Crown as owner it also brings in the exception. The meaning of the word " Owner " should not be ascertained merely by a reference to the context but should be ascertained by a consideration of the definition and the context. There is nothing inconsistent with the context.

Richardson, for the respondent. The land is in course of being conditionally purchased under the *Crown Lands Consolidation Act* 1913 (N.S.W.). A conditional purchase is a lawful contract for granting the fee-simple and therefore as soon as the conditional purchase was made or granted the land ceased to be Crown land.

The land is not " vested " in the appellant as required for the purposes of par. (*b*) of the proviso to the definition of " Owner " in s. 4. The decision in *Commissioners of the Government Savings Bank* v. *Temora Municipal Council* (1) is not applicable to this case. The land is not vested in the appellant because the mortgagor has the right to redeem until a date has been fixed by a foreclosure order. Notwithstanding that the appellant may be the " Owner " of the land as mortgagee in possession, the land is not vested in the appellant. The word " vested " as in par. (*b*) of the proviso to the definition of " Owner " in s. 4 should be given its ordinary meaning, that is to say that an absolute and indefeasible title or right to the land has been obtained (*Richardson* v. *Robertson* (2)). In view of the mortgagor's right to redeem the appellant has not obtained an absolute and indefeasible title or right to the land.

[STARKE J. referred to *Rockdale Municipal Council* v. *Metropolitan Board of Water Supply and Sewerage* (3)].

Land is not " vested " unless there be complete ownership of all interests in the land. A mortgagee in possession does not escape liability for rates in respect of ratable land merely because it, the mortgagee, is a statutory body representing the Crown. Under s. 144 the obligation is upon the owner to pay the rates. " Owner " as defined includes a mortgagee in possession. The appellant is therefore liable and is not excused from that liability by the provisions of s. 132 (1) (*g*) of the Act. So far as ratability of the land is concerned, all land is covered by s. 132 and there is no exception for the Crown except under the two heads shown in the proviso to the definition of " Owner," namely (*a*) all lands of the Crown, and (*b*) all lands vested in a statutory body representing the Crown. The subject land does not come within either of those two heads. So far as trading is concerned the appellant is an independent body; it has discretions of its own; it determines whether or not land shall be accepted as a security and whether or not it shall advance money; although a body representing the Crown it has its own special functions as a trading institution (*Grain Elevators Board (Vict.)* v. *Dunmunkle Corporation* (4)). Section 145 shows that the legislature intended that in certain circumstances the Crown should be liable for payment of rates levied in respect of land owned by it.

Ferguson K.C., in reply. The word " owned " as used in s. 132 (1) (*g*) should be construed in accordance with the definition of that

(1) (1919) 19 S.R. (N.S.W.) 111; 5 L.G.R. (N.S.W.) 1.
(2) (1862) 6 L.T. 75, at p. 78.
(3) (1909) 5 L.G.R. 44.
(4) (1946) 73 C.L.R. 70.

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word in s. 4. The definition of " Owner " in par. (*c*) does not apply in any way to the Crown as defined.

Cur. adv. vult.

The following written judgments were delivered :—

LATHAM C.J. This is an appeal by special leave from a decision of the Full Court of the Supreme Court of New South Wales upon a special case stated under the *District Courts Act* 1912 (N.S.W.). The respondent council sued the appellant bank for shire rates levied under the *Local Government Act* 1919-1945 (N.S.W.).

The land in respect of which rates were claimed was held by one George Godber as conditionally purchased land under the provisions of the *Crown Lands Consolidation Act* 1913 (N.S.W.). He mortgaged the land to the Government Savings Bank of New South Wales. The name of that bank was subsequently changed to the " Rural Bank of New South Wales." The Rural Bank at all relevant times has been the mortgagee in possession of the land, and it is " a statutory body representing the Crown " within the meaning of the *Local Government Act* 1919-1945 : See definition of " Statutory body " in s. 4. Upon these facts the learned District Court Judge held that the land was, within the meaning of s. 132 (1) (*g*) of the *Local Government Act*, " land owned by the Crown," and exempt from rating under the exception from rating created by that provision.

The Supreme Court, upon appeal by way of special case, held that the land was not " owned by the Crown " within the meaning of the last mentioned section and was ratable, and that the bank was liable because on the true construction of the Act the Crown was not the owner of the land and the bank was an " owner " within the meaning of the Act because it was a mortgagee in possession.

The *Local Government Act* 1919-1945, s. 144, provides that " Every rate shall, except where this Act otherwise expressly provides, be paid to the council by the owner of the land in respect of which the rate is levied." It is not disputed that the bank is not liable for the rates claimed unless it can be shown to be the " Owner " of the land within the meaning of s. 144 of the Act.

Section 4 provides that, in the Act, unless inconsistent with the context or subject matter :—

" ' Crown ' includes any statutory body representing the Crown."

" ' Owner,' in relation to land, includes every person who jointly or severally, whether at law or in equity :—

(*a*) is entitled to the land for any estate of freehold in possession ; or

(*b*) is a person to whom the Crown has lawfully contracted to grant the fee-simple under the Crown Lands Acts or any other Act relating to the alienation of lands of the Crown ; or

(*c*) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession, or otherwise ;

and includes every person who by virtue of this Act is deemed to be the owner :

Provided that the Crown shall be deemed to be the owner of :—

(*a*) all lands of the Crown ; and

(*b*) all lands vested in a statutory body representing the Crown."

" ' Owned,' ' owning,' and similar expressions have a meaning corresponding with that of owner."

Godber is a person to whom the Crown has lawfully contracted to grant the fee-simple in the land under the *Crown Lands Consolidation Act*, and is therefore an owner of the land within the meaning of the Act (par. (*b*) of definition of " Owner "). The Rural Bank is mortgagee in possession of the land and, it is argued, is therefore also an owner within the meaning of the Act (par. (*c*)). The proviso, however, requires that the Crown be deemed to be the owner of all lands " vested " in a statutory body representing the Crown. It is argued for the appellant that this provision, being expressed as a proviso, means that the Crown and the Crown only is to be deemed the owner of lands so vested. The Supreme Court, however, has construed " vested " as meaning " absolutely vested," and, upon the argument in this Court, both parties accepted this interpretation and agreed that, as the interest of the Bank was that of a mortgagee in possession, the land was not " vested " in the Bank within the meaning of the proviso. The interest of the Bank in the land is not contingent. It is a present interest in possession ; but the words of the proviso require that the " land " shall be " vested." The Supreme Court, as I understand the reasons given for judgment, held that, under the proviso, land was vested in a statutory body only when that body owned an estate in fee-simple in the land. No argument was presented upon this aspect of the case, but in my opinion, it is unnecessary, in order to decide the case, to determine whether this interpretation of the word " vested " should be accepted. Even though the words of the proviso in the definition of " Owner " may not enable the Bank to escape liability on the ground that the land is vested in the Bank and the Bank is a statutory body representing the Crown, the Bank will not be liable for rates unless the land is ratable.

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Section 132 (1) (*g*) of the Act is in the following terms :—

" All land in a municipality or shire (whether the property of the Crown or not) shall be ratable except :—

. . .

(*g*) land owned by the Crown, not being :—

(i) land held under a lease from the Crown by any person for private purposes ;

(ii) land occupied and used by the Crown in connection with any industrial undertaking."

The exceptions contained in pars. (i) and (ii) are immaterial for the purposes of this case.

" Crown " in the Act " includes any statutory body representing the Crown "—s. 4. The Bank is such a body. Therefore the exception in par. (*g*) of s. 132 (1) includes land owned by the Bank. As mortgagee in possession the Bank is an owner within the meaning of s. 4. Therefore it would seem to follow that land of which the Bank is in possession as mortgagee is not ratable land.

This argument was rejected by the Supreme Court because the Court held that the word " owned " in s. 132 (1) (*g*) was not to be interpreted according to the definition in s. 4. Before it can be held that the definition is not applicable, it must be shown that the application of the definition would be " inconsistent with the context or subject-matter "—s. 4. No such inconsistency has been pointed out. There is no inconsistency with any context. Section 132 (1) (*g*) is a distinct and separate provision in a list of exemptions which are independent of each other. It has not been suggested in argument that the application of the definition of " owned " to the words " land owned by the Crown " is inconsistent with the subject matter. It was held in the Supreme Court that " owned " in this provision means " absolutely owned," that is, I understand, " owned in fee-simple." This view was stated to be based upon " the context and history of clause (*g*)." I have given reasons for my opinion that there are no considerations associated with context which can be relied upon to support this proposition. As far as the history of par. (*g*) is concerned, the position is that in the *Local Government Act* 1919-1945, s. 132 (1) (*g*) contained an exception from ratable land of " land . . . which is the property of the Crown " and which was not occupied or occupied only by certain public works. The *Rating (Exemption) Act* 1931 (N.S.W.), Part II, dealt with the subject of

" Lands of the Crown." Section 4 (*a*) and (*b*) amended the definition of " Owner " and repealed the provisions of s. 132 (1) (*g*) relating to " land . . . which is the property of the Crown." The words now in s. 132 (1) (*g*)—" land owned by the Crown "—were substituted for the words " land . . . which is the property of the Crown." It is difficult to suggest any reason for these legislative changes other than a deliberate intention to make the statutory definition of " owned " applicable in the case of lands of the Crown.

I am therefore of opinion that no reason has been shown for interpreting the word " owned " in s. 132 (1) (*g*) in any other than the sense assigned to that word for the purposes of the Act. The word " owner " in s. 144 should also be interpreted in the statutory sense. (It may be observed that the judgment of the Supreme Court depends upon the Bank being held to be an " owner " in the defined meaning for the purposes of s. 144—but not for the purposes of s. 132 (1) (*g*)). Thus the Bank is an owner because it is a mortgagee in possession. The word " Crown " includes the Bank. Therefore land " owned " by the Crown in the statutory sense includes land " owned " by the Bank in the statutory sense, and is exempt from rating.

In my opinion the appeal should be allowed upon this ground.

RICH AND WILLIAMS JJ. The question for decision is whether the appellant as mortgagee in possession of land conditionally purchased under the provisions of the *Crown Lands Consolidation Act* 1913 (N.S.W.), is liable to be rated as an owner of that land under the provisions of the *Local Government Act* 1919-1945 (N.S.W.).

Section 4 of the *Local Government Act* provides that unless inconsistent with the context or subject-matter, " Crown " includes any statutory body representing the Crown. It is admitted that the appellant is such a statutory body. The same section also provides that :—

" ' Owner,' in relation to land, includes every person who jointly or severally, whether at law or in equity :—

(*a*) is entitled to the land for any estate of freehold in possession ; or

(*b*) is a person to whom the Crown has lawfully contracted to grant the fee-simple under the Crown Lands Acts . . . or

(*c*) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and

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profits thereof, whether as beneficial owner, trustee, mortgagee in possession, or otherwise;

and includes every person who by virtue of this Act is deemed to be the owner:

Provided that the Crown shall be deemed to be the owner of:—

(*a*) all lands of the Crown; and

(*b*) all lands vested in a statutory body representing the Crown."

Section 132 provides that "All land in a municipality or shire (whether the property of the Crown or not) shall be ratable except . . . (*g*) land owned by the Crown, not being—" (then follow two immaterial exceptions).

The so-called proviso to the definition of "Owner" in s. 4 is not a true proviso in the sense that it excepts out of the earlier part of the section something which would otherwise have been included in the definition, but an independent definition of the meaning of ownership of the Crown for the purposes of the Act. We are of opinion that the expression "all lands of the Crown" in its natural signification refers to lands of which the Crown is the absolute owner whether such lands are unalienated lands of the Crown or lands which the Crown has acquired by resumption or purchase; and that similarly, the expression "all lands vested in a statutory body representing the Crown" refers to lands of which the statutory body is the absolute owner. Accordingly these expressions do not include lands of which the Crown or a statutory body is the mortgagee. The Crown or statutory body would hold such lands as security only for the repayment of the mortgage debt and interest, and it would not be an ordinary use of language to describe such lands as lands of the Crown, or lands vested in a statutory body representing the Crown.

We are also of opinion that the words "land owned by the Crown" in s. 132 (1) (*g*) should be given the same meaning as in the proviso. Therefore privately owned land of which the appellant is the mortgagee is not land which is exempted from ratability by s. 132 (1) (*g*). Such lands are ratable lands, and the crucial problem is whether the appellant becomes liable for the rates as mortgagee in possession thereof. The solution of this problem depends upon whether the appellant is a person in possession of such lands as mortgagee within the meaning of par. (*c*) of the definition of "Owner." It is a maxim of the law that no statute binds the Crown unless the Crown is

expressly named therein, or it is manifest from the very terms of the statute that it was intended by the legislature that the Crown should be bound. The Crown is then bound by necessary implication (*Province of Bombay* v. *Municipal Corporation of Bombay* (1)). The *Local Government Act* as a whole is not made expressly binding on the Crown, and there is certainly no intention manifested by the Act to raise a necessary implication that the Crown was to be made liable to rates.

The appellant is included in the definition of " Crown " where the Crown is expressly mentioned in the Act. But it is not a branch of any department of State, and does not perform its functions, powers and duties as part of the executive Government of New South Wales. It is a body corporate which derives its powers from the *Government Savings Bank Act* 1906 (N.S.W.) as amended by subsequent Acts and the *Rural Bank of New South Wales Act* 1932, which provides that it shall be read with these Acts. Section 48A of the *Government Savings Bank Act* 1906 empowers the appellant to carry on a general banking business in the State of New South Wales and the Territory for the Seat of Government. These Acts constitute the appellant an independent entity with powers and discretions of its own.

The *Interpretation Act* 1897 (N.S.W.), s. 21, provides that, unless the contrary intention appears, the word " person " shall include bodies corporate as well as individuals. The appellant is a body corporate and is therefore an owner within the meaning of the definition in s. 4 of the *Local Government Act* unless the contrary intention appears. But there is no such intention, and we can see no logical reason why the appellant as mortgagee in possession of land privately owned should not be liable for rates like any other mortgagee in possession. In our opinion the Supreme Court was right in holding that the appellant was liable, and we would dismiss the appeal.

STARKE J. Land owned by the Crown, with certain exceptions immaterial here, is exempt from rating under the *Local Government Act* 1919-1945 (N.S.W.) (See s. 132 (1) (*g*)).

" Crown " includes " any statutory body representing the Crown " (See Act, " Crown," s. 4). The Rural Bank of New South Wales is such a body within the meaning of the *Local Government Act* (See Act, " Statutory body," &c. s. 4). It is the mortgagee in possession

(1) (1947) A.C. 58, at p. 61.

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of certain land conditionally purchased under the provisions of the *Crown Lands Consolidation Act* 1913 (N.S.W.) situated within the Shire of Bland, transferred to it, by way of mortgage, under the name of the Government Savings Bank of New South Wales (See *Rural Bank of New South Wales Act* 1932, s. 3 (1); *Government Savings Bank Act* 1906 (N.S.W.), s. 6).

Land mortgaged to the Crown or, as in this case, to a statutory body representing the Crown cannot be described as owned by the Crown or by the statutory body representing the Crown if the word " owned " is given its ordinary and usual meaning in the English language. The land is owned by the mortgagor subject to the mortgage which is redeemable by him upon performance of the conditions prescribed in the mortgage.

The question whether he is ratable under the *Local Government Act* depends, of course, upon its terms (See Act, ss. 4, " Owner "; 144; 139 (4)). All land in a municipality or shire, whether the property of the Crown or not, is ratable with certain exceptions (See Act, s. 132). And every rate, except where otherwise expressly provided, is payable by the owner of the land in respect of which the rate is levied. In any case where more than one person is an owner or holder of land within the meaning of the Act the rate may be levied upon any one or more of such persons (See Act s. 139 (5)).

" ' Owner ' in relation to land, includes every person who jointly or severally, whether at law or in equity . . .

(*c*) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession, or otherwise."

But the Rural Bank insists, despite these provisions of the Act, that it is not ratable and is exempted by reason of the exception set forth in s. 132 (1) (*g*): land owned by the Crown, not being—" (i) land held under a lease from the Crown by any person for private purposes; (ii) land occupied and used by the Crown in connection with any industrial undertaking."

Under the *Local Government Act* 1919-1945 unless inconsistent with the context or subject matter an " Owner " in relation to land includes, *inter alia*, mortgagees in possession, as already stated, and also " includes every person who by virtue of this Act is deemed to be the owner: Provided that the Crown shall be deemed to be the

owner of—(*a*) all lands of the Crown; and (*b*) all lands vested in a statutory body representing the Crown."

"Owned," "owning," and similar expressions have a meaning corresponding to that of owner (See Act, s. 4).

Land held under lease from the Crown by any person for private purposes and land occupied and used by the Crown in connection with any industrial undertaking is excluded, as already stated, however, from the exemption "land owned by the Crown" (See Act, ss. 132 (1) (*g*); 132 (2)). That exclusion suggests, it is said, that "land owned by the Crown" should be construed in the artificial sense attached to the words "Owner" and "Owned" in s. 4. According to that contention, it seems that all lands of the Crown are ratable and yet that all lands of the Crown, with the exclusion already mentioned, are exempt from ratability. Such a provision would be somewhat surprising and it is opposed, I think, to the scheme of the rating sections of the Act and to other exceptions contained in s. 132 (1), e.g. (*a*), (*b*), (*c*), and (*e*).

In my opinion, the artificial meaning attached to the words "Owner" and "Owned" in s. 4 cannot be attributed to the word "owned" in s. 132 (1) (*g*). The expression "land owned by the Crown" in s. 132 (1) (*g*) is used in its ordinary and natural signification which does not include that of a mortgagee in possession of land transferred by way of mortgage to it or to the Rural Bank as a body representing it.

The Rural Bank is ratable under the Act and does not bring itself within any exemption allowed by it.

The judgment of the Supreme Court from which the Rural Bank has appealed is right and this appeal should be dismissed.

McTIERNAN J. I am of the opinion that the appeal should be dismissed.

I adopt the reasons of the Full Court with a reservation. The Full Court held that the statutory meaning of "Owner" and "Owned" does not apply to the word "owned" in s. 132 (1) (*g*) of the *Local Government Act* 1919-1945 (N.S.W.). It is not, I think, necessary to adopt that view, because if the statutory meaning is applied, the appellant would fail because the land, in the present case, is not land "vested" in the appellant within the meaning of s. 4 of the *Local Government Act*.

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The appellant is mortgagee ; as the equity of redemption remains, the land is not " vested " in the appellant within the meaning of the word " vested " in the proviso to the statutory meaning of " Owner " given in s. 4 of the *Local Government Act*. But if there had been foreclosure, it may be, I do not decide this question, that some other question would need to be decided before the conclusion that the land was " owned " by the Crown within the meaning of s. 132 (1) (*g*), could be reached.

Appeal dismissed with costs.

Solicitor for the appellant, *E. R. Payne.*
Solicitors for the respondent, *E. R. Mann & Co.*

J. B.