[HIGH COURT OF AUSTRALIA.]

HAWKINS . . . . . APPELLANT;

AND

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

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1949.

SYDNEY, *April* 28, 29; *July* 1.

Latham C.J., Dixon, McTiernan, Williams and Webb JJ.

Crown Lands—Crown lease in perpetuity—Temporary reservation from sale generally after grant—Right to convert into conditional purchase—Exercise of right—Effect—Crown Lands Consolidation Act 1913-1946 (*N.S.W.*) (*No.* 7 *of* 1913—*No.* 35 *of* 1946), *ss.* 5, 29, 134, 184, 188.

The holder under the *Crown Lands Consolidation Act* 1913-1946 (N.S.W.) of a Crown lease in perpetuity may not, by reason of s. 188, convert it into a conditional purchase if since the grant of the Crown lease the Minister for Lands has notified under s. 29 that the lands comprised in the lease are temporarily reserved from sale generally.

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

Held by *Latham* C.J., *Dixon*, *McTiernan* and *Williams* JJ. (1) that land comprised in a Crown lease is, at the date of an application for its conversion into a conditional purchase, not land "lawfully contracted to be granted in fee simple" under the Crown Lands Acts; (2) that land comprised in a Crown lease is land vested in His Majesty.

Decision of the Supreme Court of New South Wales (Full Court): *Re E. W. Hawkins*, (1949) 49 S.R. (N.S.W.) 114; 65 W.N. (N.S.W.) 270, affirmed.

APPEAL from the Supreme Court of New South Wales.

Elliott William Hawkins was, at all material times, the holder under the provisions of the *Crown Lands Consolidation Act* 1913, as amended, of Crown lease 1943/1, Land District of Taree, comprising 2,063 acres, situate in the Parish of Ward, County of Hawes, and being a lease in perpetuity.

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By notification published in the Government *Gazette* dated 10th January 1947, the Minister for Lands notified that in pursuance of s. 29 of the Act the Crown lease was " temporarily reserved from sale generally."

On 12th November 1947, Hawkins made an application to the Local Land Board for the conversion of the Crown lease into a conditional purchase and the application was confirmed by the Board on 11th December 1947. The Board was of opinion that as immediately after conversion the lessee, Hawkins, had a right of conversion to conditional purchase the land within the lease was " lawfully contracted to be granted in fee simple " and therefore not Crown lands open to be reserved from sale under the provisions of s. 29 of the Act, in pursuance of which the reservation of 10th January 1947, was purported to be made, and accordingly it found that such reservation was of no effect and that the provisions of s. 188 of the Act did not apply to the subject application for conditional purchase.

Pursuant to s. 20 of the Act the Minister for Lands referred the Board's decision to the Land and Valuation Court on the ground, *inter alia*, that as at the time the Crown lease was reserved from sale generally the Board was in error in confirming the application for conversion.

The Land and Valuation Court, *Sugerman* J., upheld the reference and returned the application for conversion to the Board for disallowance.

At the request of Hawkins, made pursuant to s. 17 of the *Land and Valuation Court Act* 1921-1940 (N.S.W.), the Land and Valuation Court, *Sugerman* J., stated a case for the decision of the Supreme Court on the following questions of law :—

(a) Whether the subject land was " Crown lands " within the meaning of the *Crown Lands Consolidation Act* 1913, at the time of the notification of the reservation from sale ?

(b) Whether the subject land was at the date of the application for conversion into conditional purchase—(i) vested in His Majesty ; and (ii) not granted or lawfully contracted to be granted in fee simple under the Crown Lands Acts ?

(c) Whether the subject land even if otherwise it were Crown lands within the meaning of the Act at the time of the notification of the reservation from sale, was at that time Crown lands within the meaning of s. 29 of the Act ?

(d) Whether independently of the answers to questions (a), (b) and (c) s. 29 authorized the Minister to reserve any Crown lands which were for the time being held under a Crown

lease, being a perpetual lease, from being sold or let upon lease or licence ?

(e) Whether s. 29 authorized the Minister to reserve Crown lands from being sold in terms of the subject notification that " the Crown lands hereunder described shall be and are hereby temporarily reserved from sale generally ?

(f) Whether the effect of ss. 29, 184 and 188 of the Act was that a valid reservation by the Minister under s. 29 of the land comprised in a Crown lease from sale generally during the currency of that Crown lease prevented the conversion of that Crown lease into a conditional purchase ?

The Supreme Court (*Jordan* C.J., *Davidson* and *Street* JJ.) answered all the questions in the affirmative (*Re E. W. Hawkins* (1)).

From that decision Hawkins appealed to the High Court.

Relevant statutory provisions are sufficiently set forth in the judgments hereunder.

Badham K.C. (with him *Stuckey*), for the appellant. The proclamation made by the Minister under s. 29 of the *Crown Lands Consolidation Act* 1913-1946 was ineffective. The land in question was not Crown land within the meaning of the definition contained in s. 5 of the Act. It is land which, at the time the Minister purported to reserve it from sale, had been lawfully contracted to be granted in fee simple. At the relevant period the land was not land vested in the Crown. That has a variety of meanings which vary according to the circumstances (*In re Edmondson's Estate* (2)). While a tenancy exists there is nothing vested in the Crown within the meaning of the section. The definition comprises two parts, though before the Minister can exercise his powers under s. 29 the land in respect of which he proposes to exercise his powers must be Crown land. If the land is not Crown land, and if, not being vested in His Majesty, it is subject to an arrangement to be given in fee simple, then he cannot exercise his powers. Prima facie " vested " means vested in possession (*Richardson* v. *Robertson* (3)). Under s. 134 a Crown lease shall be a lease in perpetuity, and " Crown lease " by the definition section is a holding of that designation under the Act. But it was not a mere lease in perpetuity, it was a lease in perpetuity to which under s. 134 there was an extra right, namely to have that lease, if the conditions had been complied with, converted into a conditional purchase, which is a fee simple.

(1) (1948) 49 S.R. (N.S.W.) 114 ; 65 W.N. (N.S.W.) 270.

(2) (1868) L.R. 5 Eq. 389.

(3) (1862) 6 L.T. 75, at p. 77.

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Such a Crown lease is not land " vested in His Majesty." The Act contemplates that these lands will under certain conditions re-vest in the Crown. Section 6 makes the Act a code in respect of dealing with Crown lands. The type or nature of the interest which the Act contemplates must be deduced from the general scheme found in the Act. There was not any such thing at common law as a lease in perpetuity. " Perpetuity " was discussed in *Sevenoaks, Maidstone, and Tunbridge Railway Co.* v. *London, Chatham, and Dover Railway Co.* (1). Section 84 assists the contention that the Act does not contemplate, once certain tenures have been given, that those lands still remain Crown lands, because they only become Crown lands within a certain area which can only by forfeiture or the termination of a tenancy re-vest in the Crown. Crown lands are lands which have not been alienated in any way under the Act. Section 85 also contemplates a re-vesting in the Crown of certain lands. There is nothing in the Act from which it can be suggested that once a Crown lease has been given to which is attached a condition, that the Minister, or anybody else, has power to revoke except on forfeiture, either the lease itself or the condition thereto or to reserve the land from sale under s. 29. As used in s. 29 the word " temporarily " refers to time and sale or lease, and the word " generally " refers to method and manner, and has reference to the first part of that section. Section 29 gives a power only to reserve for a temporary period from all kinds of sale or disposition generally. Section 130B means that all Crown leases are subject to the provisions of the Act except the class of holding therein referred to. That section is not limited to Crown leases which are granted of land which has been declared to be available for conditional purchase. It is a mandatory provision which says in effect whatever powers anybody may have in respect of Crown leases they are governed by the Act. Section 188 does not apply to leases in perpetuity, nor does it give to the Minister powers to reserve from sale at any time prior to the confirmation of an application for conversion. The Minister is bound by all conditions attaching to Crown leases. One of the attributes of a Crown lease is the right to convert. That right is a valuable right. The holder of a Crown lease has the right to convert unless it has been revoked by forfeiture. The court will not construe s. 29 in such a way as to take from such a holder the valuable right of conversion conferred in unequivocal terms by other provisions of the Act. To deprive such a holder of that right is a derogation from the Crown grant and this may be done only by express and clear words to that end (*London and North Western*

(1) (1879) 11 Ch. D. 625, at p. 635.

Railway Co. v. *Evans* (1); *O'Keefe* v. *Williams* (2)). None such are contained in the Act. The contractual relationship is based upon the Act, and to ascertain the terms of the contract reference must be made to the Act itself (*Attorney-General of Victoria* v. *Ettershank* (3)). This contract was a contract to enable the appellant to convert. The word "convertible" in s. 188 to be in harmony with ss. 29 and 85 (4) should be read: "If a settlement or Crown lease comprises land which is reserved from sale previously to the granting of the lease." The second par. in s. 188 is not a clog on the rights of a person who holds a Crown lease in the ordinary way because that paragraph applies only to the very limited tenure mentioned therein. The proclamation was not any good unless authorized by s. 29 (*Australian Mortgage, Land and Finance Co. Ltd.* v. *Vinecombe* (4); *Lord* v. *Clyne* (5)).

Weston K.C. (with him *McMinn*), for the respondent. The subject land is "Crown lands" as defined in the Act. Having regard to that definition, it is an important fact that there is not any land in New South Wales which is not vested in His Majesty. The object of the definition was to indicate what lands were not subject to the Act, namely, lands not (i) permanently dedicated to any public purpose; or (ii) granted in fee simple under the relevant Acts; or (iii) lawfully contracted to be granted in fee simple. With those exceptions all land is subject to the Act. The land the subject of the lease now under consideration was not contracted to be granted in fee simple, and, *à fortiori*, it had not been granted in fee simple. The definition of Crown lands applies to s. 29 and there is not any reason why it should not so apply. The words "the Minister may . . . reserve any Crown lands" are general. They are not restricted to "waste" land and are applicable to "any" land subject to the Act. The principle *noscitur a sociis* applies to s. 29. The right to convert is a very different right from an existing proprietary right. But existing proprietary rights are affected or interfered with by the exercise of powers conferred by s. 23 and s. 34. True it is that those sections provide for the payment of compensation and s. 29 does not but then the right to convert is not an immediate existing proprietary interest but only a *locus standi* to apply for the fee simple, and the legislature doubtless thought that compensation was not payable therefor. Section 29, which is general in its terms, looks to the public interest. The Minister,

(1) (1893) 1 Ch. 16, at p. 28.
(2) (1910) 11 C.L.R. 171, at p. 192.
(3) (1875) L.R. 6 P.C. 354, at p. 372.
(4) (1890) 1 L.C.C. 70.
(5) (1881) 2 L.R. (N.S.W.) 36.

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assuming *bona fides*, is not restricted to any purpose for the reservation. He is not limited in motive, objective or purpose as to when he makes a reservation: see *Mate* v. *Nugent* (1). The history of s. 29, commencing with its prototype in the *Crown Lands Alienation Act* 1861, shows that the power was reserved in the public interest. The court will have regard to the object or policy of the legislation. The subject land is reserved, while the reservation lasts, from sale. Section 29 is the overriding section. It means what the similar provision meant in 1861, and what it meant in 1913—when it was enacted in the code—and it continues so to mean notwithstanding s. 188. The precise purpose of s. 188 is not, perhaps, immediately apparent but it does to an extent support the view put forward on behalf of the respondent. The words "subject to the provisions of the Crown Lands Acts" mean subordinate to the Act. The person concerned takes subject to every provision, and one provision in certain circumstances is an interruption of the right to convert (*British Equitable Assurance Co., Ltd.* v. *Baily* (2)). Section 85 (4) is only, at the most, additional to s. 29. The words used in s. 85 (4) simply mean that when what is indicated there is done it is an automatic reservation: it is simply a new way of revoking interests. A reservation under s. 29 would not prevent the enjoyment of any rights which the holder then had. It was not a provision for the confiscation of any existing enjoyment. The convertibility disappears upon conversion. The lessee continues as the lessee of a Crown lease; he has the ordinary rights of a lessee and the land cannot be sold by the Crown. The right of a lessee to convert under s. 134 is subject to s. 29 not having intervened. The Act of 1913 was not consolidation *simpliciter*. The words "reserved accordingly" in s. 29 mean reserved in accordance with the reservation in a particular manner. The final words of that section are an exception or a modification (i) of the requirement of the particular manner, and (ii) of the restriction as to reservation in accordance with the reservation in a particular manner.

Badham K.C., in reply. This was not a reservation from sale generally, but was simply a reservation the effect of which was to prevent the appellant from purchasing the land and availing himself of the timber thereon. Sections 29, 85, 130A, 134, 188 and 188A of the Act read together do provide a code in relation to Crown leases. The Minister has sought to take away from the appellant a right which is clearly preserved to him by those sections.

Cur. adv. vult.

(1) (1869) 8 S.C.R. (N.S.W.) 246.

(2) (1906) A.C. 35, at p. 38.

The following written judgments were delivered:—

LATHAM C.J. The question which arises upon this appeal is whether the powers of the Minister for Lands to reserve Crown lands temporarily from sale under s. 29 of the *Crown Lands Consolidation Act* 1913, as amended, extend to land held under Crown lease granted under the Act so as to prevent the lessee from converting the lease into a conditional purchase which, if the conditions of the Act are satisfied, would entitle the lessee at a future date to a Crown grant in fee simple—s. 56. The price to be paid by the purchaser for a freehold title to the land is determined in accordance with s. 186, which contains provisions for determining the capital value of the land.

A Crown lease granted under the Act is a lease in perpetuity—s. 134. The form of a Crown lease is prescribed by regulations—see regulations in Government *Gazette* No. 154 of 2nd October 1936. The lease contains conditions with respect to residence, no assignment without consent of the Minister, destruction of vermin and vegetable pests, clearing prickly pear, fencing, no cutting of timber for sale except subject to the provisions of the *Forestry Act* 1916 and regulations thereunder, right of entry by authorized persons and a condition of forfeiture upon failure to pay the rent reserved or upon breach of conditions. Section 184 gives a right, subject to certain conditions (which are dependent upon the opinion of the Local Land Board), to convert a Crown lease into a conditional purchase, and s. 56 gives a right to a conditional purchaser, subject to conditions, to obtain a Crown grant in fee simple. It is only after these rights have been successfully exercised that the lessor becomes the owner of an estate in fee simple. It is therefore quite clear that the grant of a Crown lease is not a grant in fee simple.

The appellant E. W. Hawkins holds a Crown lease under the Act. On 10th January 1947, the Minister caused to be published in the *Gazette* a notification that certain lands, including the land of which the appellant is the Crown lessee, " shall be and are hereby temporarily reserved from sale generally," the proclamation being made under s. 29 of the *Crown Lands Consolidation Act*. On 12th November 1947 the appellant applied to the Local Land Board for conversion of his lease into a conditional purchase—s. 184. The Local Land Board confirmed the application, accepting a contention that the land was not subject to the provisions of s. 29 because it was, by virtue of s. 184, land " lawfully contracted to be granted in fee simple," which is excepted from " Crown lands " by the definition of that term in s. 5 of the Act. Upon reference by the Minister to the Land and Valuation Court (*Sugerman* J.) it was held that the

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application for conversion should be disallowed. *Sugerman* J. stated a case for the Supreme Court upon questions of law under s. 17 of the *Land and Valuation Court Act* 1921 and the Full Court of the Supreme Court, agreeing with *Sugerman* J., held that the reservation was effectual and that the Local Land Board acted wrongly in confirming the application for conversion of the Crown lease into a conditional purchase.

The decision of the question depends upon the true construction of ss. 29 and 188 of the Act and associated provisions.

Section 29 is in the following terms :—" The Minister may by notification in the *Gazette* reserve any Crown lands therein described from being sold or let upon lease or license in such particular manner as may be specified in such notification ; and the lands shall thereupon be temporarily reserved from sale or lease or license accordingly, and, unless the contrary is expressly declared, shall not be reserved from sale or lease generally."

Section 30 (*d*) provides that any temporary reservation from sale or lease or licence made under the *Crown Lands Consolidation Act* may be revoked or modified. Section 188 is in the following terms :—" If a settlement lease or Crown lease comprises land which is reserved from sale such reserved land shall not be convertible into a conditional purchase unless and until such reservation shall have been revoked."

The respondent contends that the reservation from sale was lawfully made under s. 29 and that s. 188 makes it clear that that reservation from sale prevents the conversion of the Crown lease into a conditional purchase as long as the reservation remains unrevoked.

The appellant, on the other hand, contends first, that land the subject of a Crown lease is not Crown lands within the definition of that term contained in s. 5 of the Act. Section 5 provides that " unless the context necessarily requires a different meaning, the expression . . . ' Crown lands ' means lands vested in His Majesty and not permanently dedicated to any public purpose or granted or lawfully contracted to be granted in fee simple under the Crown Lands Acts." The appellant contends that lands which are subject to a Crown lease are not Crown lands because (a) they are not lands vested in His Majesty, and (b) they are lands lawfully contracted to be granted in fee simple under the Acts. Secondly, the appellant contends that, even if this be not the case, " Crown lands " in s. 29 does not bear the meaning attributed to it in the definition section. This particular contention may, I think, at once be rejected. No reason has been adduced which would justify

the attribution to the term " Crown lands " in this section of any other meaning than that specified in s. 5. Thirdly, the appellant contends that the appellant has a right under his Crown lease to convert into a conditional purchase and that s. 29 should not be held to deprive him of this right without most express words. Fourthly, it is argued for the appellant that s. 188, excluding from conversion into conditional purchase lands which are comprised in a Crown lease which are reserved from sale, should be interpreted as applying only to lands which had been reserved from sale before the grant of the Crown lease. Attention is also directed to s. 85 (4), which provides that the setting apart of land for, *inter alia*, Crown lease shall have the effect of revoking any reserves under the Crown Lands Act or the other Acts therein mentioned—Mining Acts and Forestry Acts.

The first contention of the appellant is that s. 29 does not apply to lands comprised in Crown leases because such lands are not vested in the Crown. Lands actually granted in fee simple and lands lawfully contracted to be granted in fee simple are excepted from the definition of Crown lands. It is contended that lands granted by way of Crown lease or otherwise are also excluded because, after a grant, they are no longer vested in the Crown. In my opinion this argument should not be accepted. The express and limited exception of lands contracted to be granted " in fee simple " would not be necessary if every grant of lands of any character under the Act removed the subject lands from the category of Crown lands. The definition does not provide that lands which are the subject matter of lease or licence shall also be excepted. Under a Crown lease, even though it is a perpetual lease, the Crown has become the landlord of the lessee, rent is payable to the Crown as landlord, and if the lessee does not perform the conditions of the lease the lease may be forfeited and then the Crown would have a complete title free from the lease. In my opinion it should not be held that lands subject to a Crown lease are not lands vested in the Crown.

It is next contended for the appellant that where land is held under a Crown lease it is land " lawfully contracted to be granted in fee simple " and for this reason is not within the definition of " Crown lands," and accordingly is not subject to the provisions of s. 29. The rights of a Crown lessee have been held to be contractual in character (*Attorney-General of Victoria* v. *Ettershank* (1); *O'Keefe and McKenna* v. *Williams* (2)). But the lessee is a lessee and does not become a purchaser unless he makes an application

(1) (1875) L.R. 6 P.C. 354. (2) (1910) 11 C.L.R. 171.

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for conversion into a conditional purchase which is confirmed by the Local Land Board. If such an application is made and is confirmed it will then be the case that the land is land lawfully contracted to be sold. But there is no contract to sell the land unless and until the application is confirmed. For these reasons, which are more fully developed in the reasons for judgment of *Sugerman* J. and their Honours in the Full Court, I am of opinion that the lands in question were not lands lawfully contracted to be sold. Accordingly, the land is " Crown lands."

The other arguments for the appellant depend upon the construction of ss. 29 and 188 in the context of the Act. Section 29 provides that when the Minister by notification reserves Crown lands from sale or letting upon lease or licence the lands shall *thereupon* be temporarily reserved accordingly. The word " thereupon " shows that a reservation made under this section operates immediately, if at all. Under this provision the Minister could not make a reservation to operate only from some specified future date. During its continuance the reservation prevents, as the case may be, sale, lease or licence of the land described in the notification. The word " thereupon " shows that the reservation can have no effect upon any past transactions. It is obvious, for example, that where land had been sold there could be no " reservation from sale " which would take effect upon the making of the reservation. Similarly a reservation could not avoid existing leases or licences. If there is a current lease no reservation from lease could be made under this section. But the words according to their natural construction permit in the case of land which is subject to a lease or licence a reservation from sale. The words of s. 29 are general. They apply to " *any* Crown lands." In the case of the land in question they permit the Minister to reserve those lands from sale, though not from lease.

This conclusion is in my opinion reinforced by s. 188, which is a very definite provision to the effect that if a Crown lease comprises land which is reserved from sale that land shall not be convertible into a conditional purchase unless and until the reservation has been revoked. This provision shows that land in a Crown lease may be subject to a reservation. It is contended that the words " which is reserved from sale " should be read as meaning " which has been reserved from sale before the grant of the Crown lease." The words in themselves do not bear this meaning. The words " is reserved " refer to a reservation existing at a particular time, and have no bearing upon the question as to when a reservation can be made. The question whether a Crown lease is convertible into a conditional

purchase arises when application is made to the Local Land Board for such conversion under s. 184. It is at that time that the convertibility of the Crown lease has to be determined. If land in the lease is then reserved from sale the prohibition of s. 188 applies. The contention that the words should be given the suggested interpretation is, it is argued, supported by the fact that a reservation from sale of land in a Crown lease made after the grant of the lease, if it is valid, has the effect of depriving the lessee of the valuable right of conversion into a conditional purchase. But the Crown lease is granted under the Act and is subject to *all* the provisions of the Act. Section 6 provides that " Crown lands shall not be sold, leased . . . or dealt with except under and subject to the provisions of this Act." Sections 29 and 188 are therefore provisions of the Act to which a Crown lease is subject if on a proper construction of their terms they are applicable in the case of any particular Crown lease.

The second part of s. 188 is as follows :—" A conversion into a conditional purchase shall not be allowed of land within a reserve for mining or mining purposes except with the approval of the Secretary for Mines, or of land within a State forest or timber reserve except with the approval of the Forestry Commission."

Section 85 (4) provides that when land is set apart for holdings, including holdings by way of lease, all reserves made under the Act itself or mining or forestry Acts shall be revoked. Thus when land is set apart for disposition under the Crown Lands Act it becomes free from any reservations made under the Acts mentioned. The second part of s. 188 therefore shows that a reservation may be made for mining or forestry purposes after land has been made available to be dealt with under the Act—with the necessary result of depriving the Crown lessee of some of his rights. There is a similar diminution of rights if a reservation from sale of land contained in a Crown lease is made after the grant of the lease. The fourth, fifth and sixth paragraphs of s. 134 also show that land in a Crown lease may be the subject of reservations for timber or mining purposes. Neither in these cases nor in the case of reservations made under s. 29 is there any provision requiring that the reservation should, in order to be effective, be made before the granting of the Crown lease. I am therefore of opinion that s. 29, according to its natural construction, authorized the notification of the reservation in the present case and that s. 188 prevents the conversion of the lease into a conditional purchase. For these reasons I am of opinion that the decision of the Full Court was right and that the appeal should be dismissed.

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DIXON J. The ultimate question in this appeal is whether the holder of a Crown lease in perpetuity of land in New South Wales may convert it into a conditional purchase notwithstanding that since the grant of the Crown lease the Minister for Lands has notified that the lands comprised in the lease are temporarily reserved from sale generally.

The question depends on the interpretation of more than one provision of the *Crown Lands Consolidation Act* 1913 as amended. Six separate questions of construction were submitted by the judge of the Land and Valuation Court to the Supreme Court. These are the subsidiary questions into which the ultimate question is resolved. The Supreme Court decided all six questions in favour of the Crown, holding that by reason of the reservation the Crown lease could not be converted into a conditional purchase. From this decision the holder of the Crown lease now appeals.

The conversion of a settlement lease and of a Crown lease to a conditional purchase is authorized by s. 184. But s. 188 provides that if a settlement lease or Crown lease comprises land which is reserved from sale such reserved land shall not be convertible into a conditional purchase unless and until such reservation shall have been revoked.

The basal question must be whether this provision contemplates a reservation made or attempted after the grant of the settlement lease or the Crown lease. There are various ways in which land may be reserved from sale. The forfeiture or surrender of a purchase lease or homestead selection operates as a reservation from further sale or lease until a notification to the contrary is gazetted : s. 206 (2). So does the expiration of the term of a lease : s. 228. A temporary reservation from sale may be made expressly by the Minister for any public purpose or for commonage or for a population area—and it is for him to say what is a public purpose : s. 28 and s. 5, definition of " public purpose."

But the reservation from sale in the present instance is one that the Minister purported to make under s. 29. The terms of that provision are as follows :—" The Minister may by notification in the *Gazette* reserve any Crown lands therein described from being sold or let upon lease or license in such particular manner as may be specified in such notification ; and the lands shall thereupon be temporarily reserved from sale or lease or license accordingly, and, unless the contrary is expressly declared, shall not be reserved from sale or lease generally."

The reservation gazetted is expressed as a notification that the Crown lands therein described shall be and are thereby temporarily reserved from sale generally.

Does s. 29 authorize such a notification and does it authorize one in respect of land already the subject of a Crown lease in perpetuity? Perhaps the question is interdependent with the question whether s. 188 covers a reservation made after the grant of the Crown lease. There is, however, a preliminary difficulty in being sure that s. 29 means to confer positively any power of making a reservation generally. It appears to have been assumed without question that it does so. But such a reservation is referred to in the last words only of s. 29. It is expressed not as an affirmative grant of power but as a prohibition against reserving from sale or lease generally subject to an unless clause—"unless the contrary is expressly declared." At first sight that looks, not like the grant of a power, but like a conditional prohibition against the exercise of some power the source of which is elsewhere. But the draftsmanship of this and many other provisions in the legislation is both clumsy and inartificial. It may be an indirect way of conferring a power expressly to declare a general reservation. As a prohibition its purpose or policy has not been revealed. No-one throughout the proceedings has supported the literal reading and, on the whole, I am not prepared to adopt it.

The application of s. 29 is denied on other grounds. First it is said that lands comprised in a Crown lease in perpetuity are no longer Crown lands. That depends on the definition of the expression in s. 5. Section 5 provides that unless the context necessarily requires a different meaning the expression "Crown lands" means lands vested in His Majesty and not permanently dedicated to any public purpose or granted or lawfully contracted to be granted in fee simple under the Crown Lands Acts. Of this definition the Privy Council spoke as follows:—"The interpretation section . . . is one that has given rise to much of the argument, and no doubt it is open to the criticism that the legislature has occasionally throughout the Act used the defined expressions in a sense different from that provided by the . . . section. But that section expressly guards the interpretation by declaring that the defined meaning is to be adopted 'unless the context necessarily requires a different meaning,' and their Lordships are bound to follow in that respect the mandate of the statute. The Act deals with Crown lands only, and one of its great objects was to bring all Crown lands within the provisions of one statute and

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under the control of the executive " (*Tearle* v. *Edols* (1)). I think that it is impossible to exclude the operation of the definition from s. 29. But it is said for the lease-holder that the existence and the incidents of the Crown lease are inconsistent with the land falling within the definition of " Crown Lands." Because it is a Crown lease in perpetuity the land, it is claimed, is no longer vested in His Majesty within the meaning of the definition. No doubt the reversionary interest in the Crown is slight and it may be said to be technical. But a rent is reserved, there are special conditions, the interest is capable of surrender and, for non-payment of survey fees, of forfeiture. It is difficult to find any ground for giving to the word " vested " anything but its legal meaning. It can hardly be confined to " vested in possession." The reference in the exclusionary part of the definition to land granted in fee simple tends strongly against the view that after the grant of a limited interest in possession land is no longer " vested " in the Crown for the purposes of the definition. In my opinion land subject to a Crown lease in perpetuity may still be " vested in His Majesty." But it is argued for the holder of the Crown lease that by virtue of the grant of the lease the land has been " lawfully contracted to be granted in fee simple under the Crown Lands Acts " within the meaning of the definition. The foundation for this contention is the right annexed by s. 184 to a Crown lease to apply for conversion to a conditional purchase. It may be conceded that a conditional purchase itself involves a contract on the part of the Crown to grant a fee simple. But the statutory convertibility of a Crown lease to a conditional purchase does not itself amount to a contractual obligation on the part of the Crown to grant a fee simple. It is a right given by statute to the issue of another instrument having a contractual force with reference to the grant of a fee simple. That is all. It follows in my opinion that the land subject to the Crown lease formed Crown lands for the purpose of s. 29. But the question remains whether the power conferred by s. 29 is exercisable after the grant of a Crown lease has been made. It seems the better construction of the ambiguously expressed provision to treat the power of the Minister as enabling him to reserve land from sale, or to reserve it from leasing, or to reserve it from licensing, or to reserve it from all or any two of these forms of dealing. But if a lease has been granted a reservation subsequently made from leasing could not derogate from the existing lease. It could apply only after the expiration or sooner determination of the existing lease.

(1) (1888) 13 App. Cas. 183, at p. 189.

In the same way a reservation from sale could only apply subject to existing leases and licenses, if any. If it were not for s. 188 it would follow that the reservation would be subject to the statutory right annexed to the Crown lease to apply for conversion to conditional purchase. On this view the solution of the matter would finally turn on the applicability of s. 188. But there is still the overriding contention that upon a proper understanding of s. 29 the power of reservation it contains cannot be exercisable after a Crown lease has been granted. In support of the contention it may be said that no public purpose can be fulfilled by reservation, that except by chance the land can never again come into the possession of the Crown or be open for any form of public enjoyment. Plainly a lease or licence is out of the question except in the extremely remote contingency of the destruction by surrender, forfeiture or lawful revocation of the Crown lease. Cogent as these considerations are in relation to the practical policy of the section, the difficulty is to escape from its actual words, once it is held, as I think it must be, that notwithstanding the Crown lease the land remains Crown lands.

The whole matter is therefore remitted to the construction of s. 188. Does this section apply to Crown leases or settlement leases granted before the making of the reservation ?

The argument for the holder of the Crown lease is that it should not be construed so as to authorize or allow of an interference with rights otherwise vested in the leaseholder and that its language admits of, if it does not suggest, an interpretation which would limit the application of the section to cases where before the grant of the settlement lease or the Crown lease the land had been reserved from sale. As a matter of history the provision first appeared in s. 9 of the *Crown Lands (Amendment) Act* 1908 (No. 30). That Act made settlement leases convertible into conditional purchase. It was Act No. 27 of 1917 that made the provisions applicable also to Crown leases. In its original form what is now s. 29 was expressed a little differently. It ran—If the land comprised in a settlement lease has been reserved either wholly or in part from sale such reserved land shall not be convertible into a conditional purchase unless and until such reservation has been revoked. At first sight the expression " has been reserved " may be thought to support the view that the section was meant to apply only where the reservation was made before grant of the settlement lease. But I think that the words " has been reserved " do not properly mean more than has been reserved before conversion. In both forms of

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the provision the word " convertible " is relied on as describing a quality annexed to the interest granted by the lease and as therefore pointing to a characteristic which attaches from the beginning or not at all and therefore remains part of the rights granted.

I have felt not a little doubt whether s. 188 should not receive the restrictive construction contended for. But I have reached the conclusion that the considerations relied upon are insufficient to warrant the placing of any limitation upon the generality of the language in which s. 188 is expressed. As is pointed out by *Jordan* C.J., the rights of conversion conferred by the Crown lease are subject alike to ss. 29 and 188 and these express conditions controlling the operation of s. 184. The argument that vested rights should not be impaired throws no light on the extent of the conditions.

I am of opinion that the reservation was effective under s. 184 to prevent conversion.

It is perhaps better to state in terms of the questions submitted what is my decision upon the subsidiary questions. My opinion is—(*a*) that the land was " Crown Lands " within the meaning of the *Crown Lands Consolidation Act* 1913 at the time of the notification of the reservation from sale ; (*b*) that the land was at the date of the application for conversion into Conditional Purchase—(i) vested in His Majesty and (ii) not granted or lawfully contracted to be granted in fee simple under the *Crown Lands Acts* ; (*c*) that the land even if otherwise it were Crown Lands within the meaning of the *Crown Lands Consolidation Act* 1913 at the time of the notification of the reservation from sale, was at that time Crown Lands within the meaning of s. 29 of the said Act ; (*d*) that independently of (*a*), (*b*) and (*c*) above, s. 29 of the *Crown Lands Consolidation Act* authorizes the Minister to reserve any Crown Lands which are for the time being held under a Crown Lease, being a perpetual lease, from being sold or let upon lease or licence ; and (*e*) that the section authorizes the Minister to reserve Crown Lands from being sold in terms of the notification gazetted ; (*f*) that the effect of ss. 29, 184 and 188 of the *Crown Lands Consolidation Act* is that a valid reservation by the Minister under s. 29 of the land comprised in a Crown Lease from sale generally made during the currency of the Crown Lease prevents the conversion of that Crown Lease into a Conditional Purchase.

I therefore think that the holder of a Crown lease in perpetuity of land in New South Wales may not convert it into a conditional

purchase if since the grant of the Crown lease the Minister for Lands has notified that the lands comprised in the lease are temporarily reserved from sale generally.

The appeal should be dismissed with costs.

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

The result of the answers given to the questions in this case in the Supreme Court is that the appellant's Crown lease was not convertible into a conditional purchase, because, before he applied to convert it, the land the subject of the lease had been reserved from sale. I am of the opinion that this result is in accordance with the proper interpretation of the provisions of the *Crown Lands Consolidation Act* 1913 upon which the case depends. These sections are 5, which includes the definition of the expression "Crown lands," 29, 184 and 188.

The appellant relies upon the fact that the reservation from sale was made, after the Crown lease, which he applied to convert, was granted to him. It is true that the reservation of the land intercepted the appellant's right to apply to convert the land into a conditional purchase, but the reservation was lawfully made and there is nothing in the Act which could save that right. The terms of ss. 29 and 188 are too clear to permit of any implication of a provision which would retain the convertibility of a Crown lease which, like the appellant's, was granted before the land comprised in the lease had been reserved from sale.

The reservation from sale was made under s. 29. This section is expressed to apply to any Crown lands. The application to convert was founded upon s. 184. Section 188 provides that if a Crown lease comprises land which is reserved from sale such land shall not be convertible into a conditional purchase unless and until the reservation is revoked. There was no revocation of the reservation of the land in this case.

Section 188 is the last of a series of sections beginning with s. 184, which is headed "Conversion of Settlement or Crown leases." Section 188 no less than s. 184 is part of the code in the Act relating to the conversion of any Crown lease into a conditional purchase. Section 188 contains a general rule. It is expressed to apply to any application to convert a Crown lease into a conditional purchase. The condition of its operation is that the land comprised in the Crown lease has been reserved from sale before the holder applies

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to convert. While the reservation stands it would be contrary to the section to accept the application. The operation of the section is not limited to Crown leases granted after the land comprised in them respectively was reserved from sale. The case comes down to the question whether land comprised in a Crown lease can be lawfully reserved from sale under s. 29 after the grant of the lease.

But independently of the question created by the existence of the grant at the time the reservation was made, the appellant raises the question whether the land comprised in a Crown lease is Crown land. Section 29 applies in terms to "any Crown lands." The expression "Crown lands" is given a meaning by s. 5. This section says that the expression is to have that meaning throughout the Act unless the context necessarily requires that it should have a different meaning. It cannot be said that the context of s. 29 requires that the words "Crown lands" should bear in its context a meaning differing from the statutory meaning. The section is obviously intended to apply to any lands which are within the statutory meaning of "Crown lands." The land comprised in a Crown lease is within the terms of the definition. The statutory nature and incidents of a Crown lease are not sufficient to produce the result that when land is disposed of in that way the Crown is wholly divested of the land. Further, such a disposal of Crown lands is not one of the methods of dealing with such lands, mentioned in the statutory definition, which takes lands "vested in His Majesty" out of the category of Crown lands. In particular, s. 184, which gives to the holder of a Crown lease the right to apply to convert it into a conditional purchase, does not make a Crown lease a grant or a contract to grant the land in fee simple. The clear assumption upon which the legislature has proceeded is that land comprised in a Crown lease is Crown land as defined by the Act. Section 188 is enacted upon that assumption. If such land were not Crown land, it would not be subject to the power of reservation from sale given by s. 29, and s. 188 could have no practical purpose.

Section 29 is expressed to apply to "any Crown lands." There is nothing in the section to justify the exception, by necessary implication, of Crown lands comprised in a Crown lease. The power to reserve land from sale would not extend to the making of a reservation from sale, of land which was the subject of a sale: it is not a power to make a reservation which would be repugnant to any disposal of the land already made in accordance with the Act. But this consideration does not justify the view that land the subject of a Crown lease cannot be reserved from sale; a grant by

way of Crown lease is not a sale. The reservation from sale defeats the holder's right to apply to convert the lease into a conditional purchase. But it is evident from the language of ss. 29 and 188 that the legislative intention is that the reservation of any Crown lands from sale made under the former section is to have that result.

WILLIAMS J. The appellant is the holder of Crown lease 1943/1 under the provisions of the *Crown Lands Consolidation Act* 1913 (N.S.W.), Land District of Taree, in the State of New South Wales. The lease which is a lease in perpetuity comprises 2,063 acres and is situated in the parish of Ward, County of Hawes in that district. By notification published in the Government *Gazette* on 10th January 1947 the Minister for Lands notified that in pursuance of the provisions of s. 29 of that Act certain Crown lands (which included the land leased to the appellant) were temporarily reserved from sale generally. On 12th November 1947 the appellant applied to have the Crown lease converted into a conditional purchase. On 11th December 1947 the Local Land Board District of Taree confirmed the application. The Board was of opinion that despite the notification the lessee had the right to convert the Crown lease into a conditional purchase because upon confirmation of the lease the land became land lawfully contracted to be granted in fee simple and was not therefore Crown lands open to be reserved from sale under the provisions of s. 29 of the Act on 10th January 1947. On 14th January 1948 pursuant to s. 20 of the Act the Minister for Lands referred the decision of the Board to the Land and Valuation Court. That court upheld the reference and returned the application for conversion to the Board for disallowance. The appellant then requested that court pursuant to s. 17 of the *Land and Valuation Court Act* 1921 to state certain questions of law for decision of the Supreme Court.

These questions were " (a) Whether the subject land was ' Crown Lands ' within the meaning of the *Crown Lands Consolidation Act* 1913 at the time of the notification of the reservation from sale; (b) Whether the subject land was at the date of the application for conversion into Conditional Purchase—(i) vested in His Majesty; and (ii) Not granted or lawfully contracted to be granted in fee simple under the Crown Lands Acts; (c) Whether the subject land even if otherwise it were Crown Lands within the meaning of the *Crown Lands Consolidation Act* 1913 at the time of the notification of the reservation from sale, was at that time Crown Lands within the meaning of s. 29 of the said Act; (d) Whether independently of

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the answers to questions (a), (b) and (c) above, s. 29 of the *Crown Lands Consolidation Act* authorizes the Minister to reserve any Crown Lands which are for the time being sold or let upon lease or license; and (e) Whether the said section authorizes the Minister to reserve Crown Lands from being sold in terms of the notification mentioned in par. 3 of this case; (f) Whether the effect of ss. 29, 184 and 188 of the *Crown Lands Consolidation Act* is that a valid reservation by the Minister under s. 29 of the land comprised in a Crown Lease from sale generally made during the currency of that Crown Lease prevents the conversion of that Crown Lease into a Conditional Purchase." The Supreme Court ordered that all these questions should be answered in the affirmative.

The appellant has now appealed to this Court and claims that all these questions should have been answered in the negative. In my opinion the Supreme Court was right in answering questions (a), (b) and (e) in the affirmative but should have answered questions (c), (d) and (f) in the negative. My reasons for this conclusion may be shortly stated as follows. Section 6 of the *Crown Lands Consolidation Act* provides that Crown lands shall not be sold, leased, dedicated, reserved or dealt with except under and subject to the provisions of the Act. Section 5 defines Crown lands to mean lands vested in His Majesty and not permanently dedicated to any public purpose or granted or lawfully contracted to be granted in fee simple under the Crown Lands Acts. Section 184, so far as material, provides that upon application as prescribed the holder or the owner of any Crown lease which is not liable to forfeiture may convert such lease into a conditional purchase . . . upon confirmation by the Local Land Board the conversion shall be deemed to have taken effect as from the date of application for conversion. On such confirmation the Crown land shall be deemed to have been surrendered to the Crown as from the date of application for conversion . . . with such application for conversion a provisional deposit shall be paid at the rate of 1s. per acre of the area proposed to be converted into a conditional purchase as payment or part payment of a deposit to be made of five per centum of the capital value of the land. The cost of any necessary survey or sub-division and any balance of the deposit shall be paid by the applicant within one month after he has been called upon to do so; and upon default the application may be declared to have lapsed and any moneys paid therewith shall thereupon be forfeited. Section 29 of the Act is in the following terms: "The Minister may by notification in the *Gazette* reserve any Crown lands therein

described from being sold or let upon lease or license in such particular manner as may be specified in such notification ; and the lands shall thereupon be temporarily reserved from sale or lease or license accordingly, and, unless the contrary is expressly declared, shall not be reserved from sale or lease generally."

It was contended for the appellant that the notification of 10th January 1947 could not affect his land because on that date it was no longer Crown land either because it was not land vested in His Majesty or alternatively because it was, as the Local Land Board held, land lawfully contracted to be granted in fee simple under the Crown Lands Acts. But on that date the Crown was still the legal owner of the reversion in the land and it was still, in my opinion, land vested in His Majesty. Further it was not land lawfully contracted to be granted in fee simple because it was still land leased by the Crown to the appellant. Provided the lease had not become liable to forfeiture, the appellant, unless prevented by the notification of 10th January 1947, had the right to apply under s. 184 of the Act to have the lease converted into a conditional purchase and upon confirmation of the application by the Local Land Board the Crown lease would be deemed to have been surrendered from the date of the application and the applicant to be the holder of a conditional purchase but it would only be at this stage that the land could be lawfully said to be land contracted to be granted in fee simple.

It was contended for the respondent, and the contention was upheld in the courts below, that although land had been let on a Crown lease so that it could no longer be reserved from leasing under s. 29 and s. 184 conferred on the holder of the lease a statutory right to apply to have the lease converted into a conditional purchase the Minister could still reserve the land under s. 29 from being sold by an appropriate notification in the *Gazette* at any time prior to the holder of the Crown lease applying under s. 184 to have the lease converted into a conditional purchase. In dealing with this contention it is necessary to have regard to s. 188 as well as s. 29. Section 188, so far as material, is in the following terms : " If a settlement lease or Crown-lease comprises land which is reserved from sale such reserved land shall not be convertible into a conditional purchase unless and until such reservation shall have been revoked." The meaning of s. 29 is by no means clear. The words " in such particular manner as may be specified in such notification " appear to refer to the various manners in which land may be sold or let on lease or license under the Act and therefore to authorize

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the Minister temporarily to reserve any Crown lands from being sold or let on lease or license in such of those manners as may be specified in the notification. The section also appears to authorize the Minister to reserve any Crown land from sale or lease generally that is to say from any form of sale or lease provided it is expressly stated that the lands are reserved from sale (as in the present case) or from lease or from sale and lease generally (it is to be noted, though nothing turns upon it, that the word "license" is omitted from the second limb of the section).

It is a principle of construction that Parliament cannot be supposed to intend, in the absence of clear words showing such intention, that one man's property shall be confiscated for the benefit of others, or of the public, without any compensation being provided for him in respect of what is taken compulsorily from him (*London and North Western Railway Co.* v. *Evans* (1); *Halsbury's Laws of England*, 2nd ed., vol. 31, p. 504.) A reservation from sale under s. 29 reserves the land from sale temporarily but the section does not place any limitation upon the period for which the land may be so reserved so that the period is quite indefinite. In the present case the appellant upon becoming the holder of the Crown lease acquired an immediate legal right to apply under s. 184 to have the lease converted into a conditional purchase and to have this application confirmed provided his lease was not then liable to forfeiture. The imposition for an indefinite period of a restriction upon the exercise of this right could be a grave detriment to the appellant and an intention should not be imputed to the legislature to interfere with such a right without compensation. Sections 23 and 34 provide two instances in the Act where holders of Crown land may be deprived of existing rights and in both these instances, as one might expect, the legislature has made its intention clear and provided compensation.

Section 188 imposes an express restriction upon the right of the holder of a Crown lease to convert it into a conditional purchase. The expression "land which is reserved from sale" in that section appears naturally to refer to land which is so reserved at the date of the Crown lease. It is plainly intended to refer to such reservations and if it is intended also to include reservations after that date one would have expected the section to contain the words "or shall be" after the word "is." The words "shall not be convertible into a conditional purchase unless and until such reservation shall have been revoked" and particularly the word "convertible" instead of

(1) (1893) 1 Ch. 16, at p. 28.

" converted " also appear naturally to refer to a reservation in existence at the date of the lease restricting the immediate right of conversion which would otherwise have arisen on the grant of the lease. It seems to me that the words of ss. 29 and 188 are reasonably capable of being construed so as to avoid interference with the right of the holder of a Crown lease of land which was not reserved from sale at the date of the lease to convert the lease into a conditional purchase and that the sections should be so construed. In my opinion s. 29 refers to reservations notified whilst the Crown lands in question are available for sale or for letting on lease or license because they are not at the date of the reservation sold or let on lease or license, or in other words are not the subject of any existing form of tenure authorized by the Act.

Section 30 of the Act which authorizes the Minister by notification in the *Gazette* to revoke or modify temporary reservations from sale or lease or license including reservations made under s. 29 contains a proviso that save as otherwise in the Act provided Crown lands temporarily reserved from sale shall not be sold before the expiration of sixty days after the reservation thereof shall have been revoked, and that the revocation of any reservation from lease or from license or from lease and license shall not take effect until the expiration of sixty days after the date of the publication in the *Gazette* of the notice of revocation. The purpose of the proviso appears to be to provide a period between the revocation of the restriction on the sale or leasing or licensing of Crown lands and their disposal by sale, lease or license, so that the revocation may become known and persons interested may have an opportunity of applying for the lands. In *Minister for Lands* v. *Harrington* (1), Lord *Hobhouse* delivering the judgment of the Privy Council, said, with respect to this period of grace, that " their Lordships see no reason to doubt that in providing that land released from a temporary reserve shall not be sold for sixty days, the Legislature intended to say that the interest of the Crown should not be disposed of for pecuniary consideration in the ways which the reservation had precluded " (2). But the public would not be interested where the lands were already the subject of a tenure such as a Crown lease which gave the holder the exclusive right to apply for a conditional purchase.

For these reasons I would allow the appeal, set aside the order of the Supreme Court and answer questions (a), (b) and (e) in the affirmative and (c), (d) and (f) in the negative. The respondent

(1) (1899) A.C. 408. (2) (1899) A.C., at p. 414.

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should pay the costs of the appellant in the Supreme Court and in this Court.

WEBB J. *Sugerman* J., in his judgment in the Land and Valuation Court of New South Wales, said that before him no argument was directed to the question whether the first paragraph of s. 188 applied to a reservation made during the currency of a Crown Lease as distinct from one made prior to its commencement. He added that it might be that s. 29 would not, of its own force, have the effect of preventing conversion under s. 184 where the reservation was made during the currency of the lease; but that once the position was reached that there might be a valid reservation during the term of the lease the language of s. 188 seemed wide enough to have that effect. Earlier in his judgment he observed that s. 23 permitted the withdrawal of lands from existing leases and that s. 34 authorized the setting aside of stock routes through lands under lease; but he did not find it necessary to point out that under these two sections compensation was provided for such interference. A reservation under s. 29 of lands already comprised in a Crown lease would not prevent the lessee from using the land as before but it would postpone the time when, by purchasing it, he might add to the use to which he might put it. There is no reason that I can suggest which would warrant compensation under ss. 23 and 34 and not under s. 188 if s. 29 authorizes a reservation after the Crown lease has been granted. In view of the policy of the legislation to provide compensation when the legislation authorizes an interference with a lessee's rights which is not expressly authorized by the lease itself, if the section which is claimed to authorize such interference with or postponement of a lessee's rights is silent as to compensation, it should not, in my opinion, be held to authorize such interference or postponement, unless the Court is satisfied that the words relied upon to warrant such interference or postponement permit of no other conclusion. Further, as Mr. *Badham* submitted for the appellant, any denial of the right of conditional purchase is a derogation from the grant, and, although the legislature has the undoubted power to derogate from a grant or to authorize the Executive so to do, the statute should not be considered to have that effect unless the wording thereof is plain and unambiguous. Now I think that both s. 29 and s. 188 are ambiguous. As to s. 188 the words " land which is reserved from sale " may, in my opinion, be taken to refer only to lands so reserved at the time the lease is granted and, as to s. 29, I think it may be taken to refer only to

Crown lands of which it can be predicated that they have been neither sold nor let, thus necessarily excluding the definition of Crown lands in s. 5.

I would allow the appeal.

Appeal dismissed with costs.

Solicitors for the appellant, *L. O. Martin & Sons*, Taree, by *R. A. O. Martin*.

Solicitor for the respondent, *F. P. McRae*, Crown Solicitor for New South Wales.

J. B.