[HIGH COURT OF AUSTRALIA.]

RURAL BANK OF NEW SOUTH WALES . APPELLANT;
CLAIMANT,

AND

HAYES . . . . . RESPONDENT.
DEFENDANT,

RURAL BANK OF NEW SOUTH WALES . APPELLANT;
CLAIMANT,

AND

McEVOY . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1951.

SYDNEY, *July* 12, 13.

MELBOURNE, *Oct.* 16.

Dixon, McTiernan, Williams, Fullagar and Kitto JJ.

Landlord and Tenant—Rural Bank of New South Wales—Land acquired by transfer—Quaere, vesting—Bank's commissioners—"Property of the Crown"—Land leased to tenants—Termination of tenancy—Notice to quit—Action of ejectment in Supreme Court—Immunity from operation of "landlord and tenant" statute—Statute binding on bank—Landlord and Tenant (Amendment) Act 1948-1949 (*N.S.W.*) (*No.* 25 *of* 1948—*No.* 21 *of* 1949), *ss.* 5, 8, 62, 69—*Government Savings Bank Act*, 1906-1947 (*N.S.W.*) (*No.* 48 *of* 1906—*No.* 38 *of* 1947), *s.* 48A—*Government Savings Bank Amendment Act* 1913-1945 (*N.S.W.*) (*No.* 13 *of* 1913—*No.* 5 *of* 1946), *s.* 19*.

In actions of ejectment brought by the Rural Bank of New South Wales in the Supreme Court of that State in respect of lands of which it was registered under the *Real Property Act*, 1900 (N.S.W.), it was contended,

*Section 19 of the *Government Savings Bank Amendment Act* 1913-1945 (N.S.W.) provides:—"The commissioners shall hold all real and personal property whatsoever vested in them under the Principal or this Act for and on behalf of the Government of New South Wales, and all moneys so vested in or held by them, whether the same be accrued due or not, are hereby declared to be public moneys belonging to His Majesty, and the property of the Crown, and, in addition to all other remedies, shall be recoverable accordingly as from debtors to the Crown."

that although the bank was not the Crown, by s. 19 of the *Government Savings Bank Amendment Act*, 1913-1945 (N.S.W.) all premises vested in it were the property of the Crown, and that the immunity of the Crown exempts from the operation of the *Landlord and Tenant (Amendment) Act*, 1948-1949 (N.S.W.), all property of the Crown, in whomsoever it may be vested. The notice to quit did not comply with s. 62 in Part III. of that Act.

Held, (1) that the *Landlord and Tenant (Amendment) Act*, 1948-1949, was binding on the bank; and

(2) that s. 19 of the *Government Savings Bank Amendment Act*, 1913 (N.S.W.), (i) does not apply to property or moneys acquired by the bank otherwise than under the vesting provisions of the *Government Savings Bank Act*, 1906-1947 (N.S.W.); and (ii) should not be given the wide construction placed upon it in *Commissioners of the Government Savings Bank* v. *Temora Municipal Council*, (1919) 19 S.R. (N.S.W.) 111; 36 W.N. 56; 5 L.G.R. 1.

Decision of the Supreme Court of New South Wales (Full Court), (1950) 67 W.N. (N.S.W.) 212, affirmed.

APPEALS from the Supreme Court of New South Wales.

Rural Bank of New South Wales v. *Hayes*. The Rural Bank of New South Wales, a body corporate under and by virtue of s. 6 of the *Government Savings Bank Act*, 1906-1947 (N.S.W.) as varied by s. 3 of the *Rural Bank of New South Wales Act*, 1932 (N.S.W.), became, on 5th November 1948, and was at all material times, the registered proprietor for an estate in fee simple under the provisions of the *Real Property Act* 1900 (N.S.W.), as amended, of the land comprised in certificate of title volume 6019, folio 79, upon which land were erected a shop and other premises known as number 38 Railway Parade, Burwood.

The premises were let at all material times to John Samuel Raven Hayes, saddler, as tenant from week to week.

A notice to quit the premises, under the seal of the Rural Bank, was served on the manager of Hayes' business at those premises. The notice did not fulfil the requirements of s. 62 of the *Landlord and Tenant (Amendment) Act*, 1948-1949 (N.S.W.).

Hayes failed to comply with the notice and refused to deliver up to the bank the possession of the premises.

The bank commenced an action of ejectment in the Supreme Court of New South Wales against Hayes, who entered an appearance thereto and filed particulars of defence in which he denied that the tenancy had been duly determined and relied upon the facts that the property consisted of prescribed premises as defined by the *Landlord and Tenant (Amendment) Act*, 1948-1949, within the meaning of which Act the bank and Hayes were respectively lessor and lessee and that a notice to quit complying with s. 62

H. C. OF A. 1951.

RURAL BANK OF N.S.W. v. HAYES.

of that Act had not been served, and, further, that the court, by reason of s. 69 of that Act, did not have jurisdiction to entertain the action.

The bank applied to the Supreme Court, in chambers, by way of a summons under r. 504 of the *Supreme Court Rules* (N.S.W.), for an order that the appearance by Hayes be struck out and the bank be given liberty to enter judgment for the recovery of the land.

Owen J. refused to make any order, holding that he did not have any jurisdiction to entertain the summons, and an appeal from that refusal was dismissed by the Full Court of the Supreme Court (*Street* C.J., *Maxwell* and *Herron* JJ.).

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

Rural Bank of New South Wales v. *McEvoy*. The facts in this case were in all relevant respects similar to those in the action against Hayes.

The appeals were heard together.

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

N. A. Jenkyn K.C. (with him *A. B. Kerrigan*), for the appellants. The issue is whether or not the subject premises are " prescribed premises " within the meaning of the *Landlord and Tenant (Amendment) Act*, 1948-1949 (N.S.W.). By virtue of s. 19 of the *Government Savings Bank Amendment Act*, 1913-1945 (N.S.W.), the land is Crown land. The *Landlord and Tenant (Amendment) Act* does not apply to land belonging to the Crown. " Prescribed premises " are premises as indicated in that Act, other than those that belong to the Crown. That Act is expressed as not applying to the Crown, which means not only to the Crown and its servants in person but also to the proprietary rights of the Crown. The immunity of the Crown reaches out to protect the Crown's proprietary rights and prerogatives in the premises. The provisions of the *Landlord and Tenant (Amendment) Act* would be seriously affected if the Act were held to apply. Nothing turns on the Rural Bank being an agent of the Crown. The land is exempt from rating, because it is Crown property (*Commissioners of Government Savings Bank* v. *Temora Municipal Council* (1)). Provisions similar to s. 19 were dealt with in *Grain Elevators Board (Vict.)* v. *Dunmunkle Corporation* (2) and *Victorian Railways Commissioners*

(1) (1919) 19 S.R. (N.S.W.) 111 ; 36 W.N. 56 ; 5 L.G.R. 1.

(2) (1946) 73 C.L.R. 70, at pp. 74, 77, 79, 81, 83, 87.

v. *Herbert* (1), see also ss. 24 and 48A of the *Government Savings Bank Act*, 1906-1947 (N.S.W.). If there be a Crown proprietary right in the subject premises then that right is protected from the provisions of the *Landlord and Tenant (Amendment) Act*. Rights of the Crown in relation to property are extensive (*Maxwell* on the *Interpretation of Statutes*, 8th ed. (1937), p. 120); *Attorney-General* v. *Hancock* (2); *Attorney-General* v. *Randall* (3)). If the Crown has any proprietary right in the land, then at common law the *Landlord and Tenant (Amendment) Act* would, unless expressly or by irresistible inference be subjected to it. That Act is legislation *in rem* (*Rudler* v. *Franks* (4); *Clark* v. *Downes* (5); *Wirral Estates, Ltd.* v. *Shaw* (6); see also *Perry* v. *Eames* (7); *Heiner* v. *Scott* (8) and *Tamlin* v. *Hannaford* (9)). The Rural Bank is in part a Crown agent. It is not subject to garnishee, and it does not pay income tax or rates: see the *Government Savings Bank Act*, 1906, as amended, ss. 70 et seq., 96. Its history, as disclosed by its legislation, shows that its origin was from a department of State. Section 5 of the *Landlord and Tenant (Amendment) Act* was inserted to make statutory the Crown's immunity and it was not intended to cut it down. That immunity applies to the Crown, its servants and agents and in respect of its property and prerogatives. The reference in s. 5 to the Housing Commission is merely to dispel doubts which might arise from the fact that the Housing Commission had been given statutory status as a corporation representing the Crown in the *Local Government Act*, 1919 (N.S.W.), as amended: see *North Sydney Municipal Council* v. *Housing Commission (N.S.W.)* (10).

S. G. Webb K.C. (with him *F. Officer*), for the respondent Hayes. The Rural Bank is not the Crown so as to claim implied or express exemption from the Act. The legislature has categorized the exemption in s. 5 of the *Landlord and Tenant (Amendment) Act*, 1948-1949 (N.S.W.). The express exclusion of the Housing Commission in s. 5 shows that the word "Crown" in that section should be given the restricted meaning of Executive Government and bodies performing functions of government. That is, in any event, its prima-facie meaning (*North Sydney Municipal Council* v. *Housing Commission* (N.S.W.) (10)). The words of s. 5 are plain

(1) (1949) V.L.R. 211.
(2) (1940) 1 K.B. 427, at pp. 431-438.
(3) (1944) K.B. 709.
(4) (1947) K.B. 530.
(5) (1931) 145 L.T. 20.
(6) (1932) 2 K.B. 247.
(7) (1891) 1 Ch. 658.
(8) (1914) 19 C.L.R. 381.
(9) (1950) 1 K.B. 18.
(10) (1948) 48 S.R. (N.S.W.) 281; 65 W.N. 128; 17 L.G.R. 26.

H. C. OF A. 1951. RURAL BANK OF N.S.W. v. HAYES.

and unambiguous and it would not therefore be right to say that the Housing Commission was included in s. 5 *ex majore cautela*. There is nothing in the rating cases, for example, *Commissioners of the Government Savings Bank* v. *Temora Municipal Council* (1), to justify an inference that for all purposes the bank was the Crown. If it was, therefore, the intention of Parliament that the bank should be excluded from the Act, one would expect and require the exclusion to be express: see the *Government Savings Bank Act*, 1906-1947 (N.S.W.), ss. 6, 22, 24 (c), and the *Government Savings Bank Amendment Act*, 1913-1945 (N.S.W.), s. 19. The bank is clearly not the Crown for general purposes (*Bland Shire Council* v. *Rural Bank of New South Wales* (2); *Rural Bank of New South Wales* v. *Council of Shire of Bland* (3)). The bank is a statutory corporation conducting a non-governmental function with unfettered discretion to lease and to recover possession. Section 19 of the *Government Savings Bank Amendment Act*, 1913, if it establishes beneficial ownership by the Crown only does so in relation to property which was itself vested by the principal and that Amending Act. There is not any beneficial ownership in the Crown with regard to property acquired by the commissioners merely by exercise of a power given to them by these Acts (*Commissioners of the Government Savings Bank* v. *Temora Municipal Council* (1); *Victorian Railways Commissioners* v. *Herbert* (4)).

G. E. Barwick K.C. (with him *H. R. Hudson*), for the respondent McEvoy. Ownership is not part of the definition of "prescribed premises" in the *Landlord and Tenant (Amendment) Act*, 1948-1949 (N.S.W.). The obligation affected is a contractual right. The words "not bind the Crown" mean not bound by disabilities falling on a lessor or lessee by contract. The question is: Is the Crown the lessor? and is not: Has someone leased Crown property?

N. A. Jenkyn K.C., in reply.

Cur. adv. vult.

Oct. 16. The following written judgments were delivered:—

DIXON, MCTIERNAN, WILLIAMS AND KITTO JJ. In each of these cases, the appellant sued the respondent in an action of ejectment in the Supreme Court of New South Wales, claiming to be entitled

(1) (1919) 19 S.R. (N.S.W.) 111; 36 W.N. 56; 5 L.G.R. 1.
(2) (1946) 47 S.R. (N.S.W.) 245; 64 W.N. 18; 16 L.G.R. 51.
(3) (1947) 74 C.L.R. 408; 16 L.G.R. 130.
(4) (1949) V.L.R. 211.

to the possession of premises which were "prescribed premises" within the meaning of the *Landlord and Tenant (Amendment) Act*, 1948-1949 (N.S.W.). The particulars of claim in each action alleged, in effect, that the defendant had held the premises as a tenant of the claimant, and that the tenancy had been duly determined by notice to quit. Each defendant entered an appearance and filed particulars of defence denying the due determination of the tenancy, and relying upon the fact that no notice to quit complying with s. 62 of the *Landlord and Tenant (Amendment) Act* had been served. One defendant (Hayes) also alleged specifically that, by reason of s. 69 of that Act, the Supreme Court had no jurisdiction to entertain the action.

Upon summonses to strike out the appearances and for liberty to enter judgment for the claimant, proof was given in each case that the claimant was the registered proprietor of the land under the provisions of the *Real Property Act*, 1900 (N.S.W.), that a weekly tenancy of the premises had been created between the claimant and the defendant, and that there had been served on the defendant a notice to quit which would have sufficed to determine the tenancy at common law. The notices to quit, however, did not comply with s. 62. The only question disputed on the hearing of the summonses was whether the Act is binding on the claimant. *Owen* J., who decided the matter in the first instance, answered this question adversely to the claimant and ruled that, by reason of s. 69, the Supreme Court had no jurisdiction to entertain the actions. Appeals to the Full Court were dismissed, and from the orders of the Full Court the claimant appeals to this Court by special leave.

Sections 62 and 69 are contained in Part III of the Act. Section 62 provides that, except as provided by Part III, the lessor of any prescribed premises shall not give any notice to terminate the tenancy or take or continue any proceedings to recover possession of the premises from the lessee or for the ejectment of the lessee therefrom. The section further provides that, subject to the Part, a lessor may take proceedings in any court of competent jurisdiction for an order for the recovery by him of any prescribed premises if the lessor, before taking the proceedings, has given to the lessee, upon one or more of certain prescribed grounds but upon no other ground, notice to quit in writing for a period determined in accordance with s. 63, and that period of notice has expired. Section 69 provides that for the purposes of s. 62 courts of petty sessions, and those courts only, shall be courts of competent jurisdiction. Section 8 (1) of the Act defines "lessor"

H. C. OF A. 1951. RURAL BANK OF N.S.W. v. HAYES. Dixon J. McTiernan J. Williams J. Kitto J.

and " lessee " to mean the parties to a lease or their respective successors in title, and to include certain other persons; and s. 8 (2) provides that " lessee " includes a person who remains in possession of premises after the termination of his lease of the premises, and that " lessor " has a corresponding meaning.

The only other provision which it is necessary to mention is contained in s. 5. That section provides that the Act shall not bind (a) the Crown in right of the Commonwealth or of the State; or (b) the Housing Commission of New South Wales.

The appellant contends that, by reason of the rule of construction which concedes to the Crown an immunity from the operation of a statute not disclosing by express words or necessary implication an intention to bind the Crown, and by reason also of the express provision of s. 5 (a), nothing in Part III of the *Landlord and Tenant (Amendment) Act* should be held to affect the right of the appellant to determine the respondents' tenancies in accordance with the rules of the common law or to recover possession of the premises by action of ejectment in the Supreme Court.

The appellant is a body corporate which was constituted by the *Government Savings Bank Act*, 1906 (N.S.W.), by the name of the " Commissioners of the Government Savings Bank of New South Wales ". The name was altered by s. 3 of the *Rural Bank of New South Wales Act*, 1932 (N.S.W.). That section also provided that the alteration of name should not affect, *inter alia*, any property of the body corporate (sub-s. (2)), and that a reference in any other Act to the commissioners of the Government Savings Bank of New South Wales shall be read and construed as a reference to the Rural Bank of New South Wales (sub-s. (5)).

The appellant is an independent body with powers and discretions of its own, empowered by s. 48A of the *Government Savings Bank Act*, 1906-1947 (a section introduced by the *Rural Bank of New South Wales (General Banking) Act*, 1947 (N.S.W.)) to carry on general banking business in the State and elsewhere. Its functions are not those of a department of the executive Government of New South Wales. Consequently it is not entitled to claim for itself, as being within the concept of the Crown, an immunity belonging to the Crown either under the common law or under statutory provision: see *Bland Shire Council* v. *Rural Bank of New South Wales* (1). This proposition the appellant did not contest. The argument advanced on its behalf was that, although the appellant

(1) (1946) 47 S.R. (N.S.W.), at p. 248; 64 W.N., at p. 19; (1947) 74 C.L.R., at p. 417.

is not the Crown, all premises vested in it are the property of the Crown, and that the immunity of the Crown exempts from the operation of the *Landlord and Tenant* (*Amendment*) *Act* all property of the Crown, in whomsoever it may be vested.

The contention that premises vested in the appellant are the property of the Crown was founded upon s. 19 of the *Government Savings Bank Amendment Act*, 1913-1945 (N.S.W.). This section must now be read with the substitution of name required by the Act of 1932, but in its original form it provided as follows :—" The commissioners shall hold all real and personal property whatsoever vested in them under the Principal or this Act for and on behalf of the Government of New South Wales, and all moneys so vested in or held by them, whether the same be accrued due or not, are hereby declared to be public moneys belonging to His Majesty, and the property of the Crown, and, in addition to all other remedies, shall be recoverable accordingly as from debtors to the Crown."

The case of *Commissioners of the Government Savings Bank* v. *Temora Municipal Council* (1) supports the argument, if it was correctly decided under the provisions of the law as it then stood relating to the exemption of the Crown from rating. The Full Court of the Supreme Court decided in that case that, by virtue of s. 19, all land held by the bank was " the property of the Crown " for the purposes of the *Local Government Act*, 1906 (N.S.W.). There was not at that time a definition in the *Local Government Act* of the expression " the Crown " extending its meaning to include any statutory body representing the Crown and a definition of " statutory body representing the Crown " embracing a variety of named public bodies and such others as might be proclaimed. See s. 4 of the *Local Government Act* 1919-1948 (N.S.W.), a provision under which the Government Savings Bank of New South Wales was proclaimed to be a statutory body representing the Crown (14th May 1920). See further *The Shire of Bland Case* (2), where *Rich* and *Williams* JJ. refer to the admission made in that case that the Rural Bank is such a body.

The property to which the section applies is all real and personal property whatsoever vested in the commissioners " under the Principal or this Act ", and all moneys " so vested in or held by them ". Neither in the judgments in the *Temora Case* (1) nor in the argument presented for the appellant in this case is any limiting effect conceded to the words " under the Principal or this Act ", or to the word " so ". Counsel for the appellant submitted that

(1) (1919) 19 S.R. (N.S.W.) 111; 36 W.N. 56; 5 L.G.R. 1.

(2) (1947) 74 C.L.R., at p. 415; 16 L.G.R., at p. 135.

H. C. OF A. 1951. RURAL BANK OF N.S.W. v. HAYES. Dixon J. McTiernan J. Williams J. Kitto J.

property could not be acquired by the appellant save by the direct operation of the principal or the amending Act or by an exercise of some power conferred thereby; and he argued that property acquired by either of those means was aptly described as vested in the appellant "under" the one Act or the other. He therefore denied that the words "under the Principal or this Act" or the word "so" produced any effect upon the meaning of the section.

It must be conceded that there is ambiguity in the language of the section: cf. *Corporation of Hyde* v. *Bank of England* (1); *Ex parte Zietsch*; *Re Craig* (2); and, that being so, it is permissible to consider the history of the legislation in order to ascertain its meaning.

The Act of 1906, which constituted the Commissioners of the Government Savings Bank of New South Wales as a body corporate, provided by s. 23 that the business of the bank should be carried on in two distinct and separate departments, namely (A.) the Savings Bank Department, and (B.) the Advance Department. The Act provided that to each department were to be carried certain pre-existing moneys, the character of which it is important to notice.

(A.) To the Savings Bank Department were to be carried moneys of two classes, namely (i) all moneys in the Treasury at credit of the Government Savings Bank Trust Fund, and (ii) all moneys held or deposited in a bank under the *Government Savings Bank Act*, 1902 (N.S.W.), or advanced to the Federal Government for the purposes of that Act: (s. 14). The moneys in the Treasury at the credit of the Government Savings Bank Trust Fund consisted of deposits which had been received into the Treasury under the *Government Savings Bank Act*, 1902. This Act had repealed earlier Acts under which a Government Savings Bank had operated, and it provided machinery whereby certain officers were empowered to receive deposits for remittance to the Treasury and to repay the same under such regulations as the Governor might prescribe: s. 4. Moneys deposited were made a charge upon the Consolidated Revenue Fund (s. 11 (1)). The Colonial Treasurer was also authorized to receive as a deposit under the Act moneys remaining in the hands of the trustees of any bank, commonly known as the Penny Savings Bank, who had determined to close such bank for the receipt of deposits; and the depositors were to be considered as depositors under the provisions of the Act (s. 17). Thus the

(1) (1882) 21 Ch. D. 176, at pp. 180, 181.

(2) (1944) 44 S.R. (N.S.W.) 360, at p. 364; 61 W.N. 211, at pp. 213, 214.

first class of moneys which under the 1906 Act were to be carried to the Savings Bank Department were moneys deposited by and repayable to creditors of the Crown. The second class of such moneys were moneys owing to the Crown. The 1902 Act had provided, as to moneys deposited under the Act, that the Colonial Treasurer might deposit the same with such incorporated bank as the Governor might from time to time appoint: (s. 11 (2)); and it had also provided, as had an earlier Act (No. 79 of 1900), that the Governor might, by agreement with the Governor-General, make arrangements for the execution and performance by officers of the Postal Department of the Commonwealth of certain duties in respect of the administration of the Act: (s. 3), which included the repayment of deposits: (s. 4).

(B.) To the Advance Department were to be carried all moneys and securities for money, and all other property held by or on behalf of the Advances to Settlers Board or by the Treasurer or any person on his behalf under the Advances to Settlers Acts: (s. 16); and the commissioners were to collect and carry to the Advance Department all repayments made under the Advances to Settlers Acts and all interest on such advances: (s. 17). The Advances to Settlers Acts, which were the Acts No. 1 of 1899, No. 1 of 1902 and No. 106 of 1902, were repealed by the 1906 Act, subject to a proviso that subject to that Act they should continue in force in respect of advances made thereunder before the commencement of the 1906 Act until all such advances with interest thereon should be repaid or written off as bad debts: (s. 4). These Acts had provided for advances of Crown moneys to holders of freehold land or of certain holdings under the Crown Lands Acts: (Act No. 1 of 1899, s. 9 (1)). Every such advance with interest thereon was made a debt due by the person to whom the advance was made, recoverable by the Secretary for Lands and charged on the land in respect of which the advance was made: (s. 9 (2) (h)); and if any amount of principal or interest was unpaid for a period of three months the Secretary for Lands was given, in respect of freehold lands a power of sale, and in respect of Crown lands holdings a power of forfeiture: (s. 9 (2) (i)). The *Government Savings Bank Act*, 1906, provided that, notwithstanding the repeal of the Advances to Settlers Acts, advances made under those Acts should be repaid with interest to the Advance Department of the Bank, that the commissioners might take any proceeding which under those Acts might have been taken by the Secretary for Lands, except forfeiture of lands held under the Crown Lands Acts not being freehold lands, and in

H. C. OF A. 1951. RURAL BANK OF N.S.W. v. HAYES. Dixon J. McTiernan J. Williams J. Kitto J.

respect of the last-mentioned lands that any sums received by or on behalf of the Crown on account of improvements, to the extent of the amount owing to the Advance Department, should be payable to that department after deducting any moneys overdue at the date of forfeiture for rent or instalments: (s. 19).

These provisions having been made as to the vesting in the commissioners of (a) moneys held by the Crown to answer the claims of depositors under the Act of 1902, and (b) moneys to be recovered on account of the Crown in respect of deposits made by the Crown in an incorporated bank, advances made to the Federal Government for the purposes of the 1902 Act, or advances made by the Crown under the Advances to Settlers Acts, the 1906 Act proceeded to make provision for the carrying on of business by the bank. It provided that the bank should be administered, governed and managed by the commissioners: (s. 22); and that the business of the bank should be carried on in two distinct and separate departments, all transactions and accounts relating to each department being kept separate from those relating to the other department, no money belonging to one department being used for the purpose of the other department and no liability incurred in respect of one department affecting the other department or the funds thereof: (s. 23). The Act provided that the commissioners might, on behalf of the bank, purchase or lease lands and buildings to be used in the business of the bank, hold property as security, and sell, lease, convey, assign and assure "such lands, buildings, and property, or any property vested in them by this Act": (s. 24). The Act further empowered the commissioners to establish branches and agencies of the bank for the receipt of deposits and the payment of deposits and interest thereon and for receiving applications for advances under the Act: (ss. 27, 28). The repayment of all deposits in the bank and the payment of interest thereon were made payable out of the funds of the commissioners held under Part V. of the Act (which dealt with the Savings Bank Department), and was guaranteed by the Crown, any liability arising from the guarantee being made payable out of the Consolidated Revenue Fund: (s. 44). Provision was made by Part VI. for the lending of moneys by the commissioners from the Advance Department for purposes wider than those to which the Advances to Settlers Acts had been directed.

The Act of 1906 was amended in a number of respects by the *Government Savings Bank Amendment Act*, 1913, s. 18 and Schedule. Only one of the amendments which it made need be mentioned.

Section 19 (c) of the Act of 1906 was amended by omitting the provision for deduction of any moneys overdue at the date of forfeiture for rent or instalments. The effect of this amendment was to enable the Advance Department to receive, to the extent of the amount owing to that department, the whole of the sums received by or on behalf of the Crown on account of improvements on a forfeiture of a Crown lands holding for non-payment of advances made under the Advances to Settlers Acts and interest thereon and expenses incurred in connection with the advance. Thus the moneys recoverable on account of the Crown were made recoverable wholly by the bank, instead of partly by the bank and partly by the Lands Department.

In consequence of all these provisions, the commissioners might at any time hold property, or be entitled to moneys, of two kinds : (i) property or moneys formerly belonging to the Crown but vested in them under the 1906 Act or the 1913 Act, and (ii) property or moneys acquired by them in the course or for the purposes of their banking business. It is in the light of this situation that s. 19 of the 1913 Act must be read. It will be seen at once that the expression " all real and personal property whatsoever vested in them under the Principal or this Act " is not equivalent to " all real and personal property whatsoever vested in them ", and the expression " all moneys so vested in or held by them " is not equivalent to " all moneys vested in or held by them ". The words " under the Principal or this Act ", and the word " so ", far from being meaningless or otiose, restrict the application of the section to the first of the two classes of property and money above mentioned. The reason for the enactment of the section in this restricted form is clear. The vesting provisions to which reference has been made had no other purpose than to utilize the machinery of the bank for the enforcement of the Crown's rights and the performance of its obligations with respect to the moneys and other property to which those provisions applied ; and s. 19 accordingly preserved the character of such moneys and property as belonging to the Crown notwithstanding the vesting for which the Acts provided.

Section 19 should therefore not be construed as applying to property or moneys acquired by the bank otherwise than under the vesting provisions of the Acts. The wide construction placed upon the section in *Commissioners of the Government Savings Bank* v. *Temora Municipal Council* (1) cannot be accepted.

(1) (1919) 19 S.R. (N.S.W.) 111 ; 36 W.N. 56 ; 5 L.G.R. 1.

H. C. OF A. 1951. RURAL BANK OF N.S.W. v. HAYES. Dixon J. McTiernan J. Williams J. Kitto J.

In each of the present cases the evidence disclosed that the land of which possession was claimed had been acquired by the appellant by registration of a memorandum of transfer under the *Real Property Act*, 1900. It is not land to which s. 19 of the 1913 Act on its true construction has any application, and there is therefore no foundation for the argument upon which the appellant relied.

But, even if the land were held by the appellant for and on behalf of the Government of New South Wales by virtue of s. 19, it would not follow that the appellant as lessor of the land would be exempt from the operation of the *Landlord and Tenant (Amendment) Act*, 1948-1949. It has already been pointed out that the appellant is not the Crown; indeed s. 19 acknowledges as much by its express provision in favour of the Government *vis-à-vis* the appellant. The operation of the relevant provisions of the *Landlord and Tenant (Amendment) Act* is to diminish the rights of lessors; and the effect of s. 5 (a) in relation to those provisions is to preserve the rights of the Crown as a lessor. A corporate lessor which is not the Crown is bound by the Act; and it is nothing to the point that land of which the corporation is the lessor is held on behalf of the Government. It is a necessary consequence of the vesting of land in the corporation that the immunity of the Crown from the operation of the Act has no relevance in proceedings by the corporation to recover possession of the land. This is clearly the position in the present case, because the appellant is given by s. 48A (3) (k) of the *Government Savings Bank Act*, 1906 (as amended by Act No. 38 of 1947) a power of leasing exercisable for the purpose of carrying on its general banking business, so that the appellant sues in this case as a lessor in its own right and not in any sense on behalf of the Crown.

The appeals should be dismissed with costs.

FULLAGAR J. I agree with the judgment of *Dixon*, *McTiernan*, *Williams* and *Kitto* JJ., and I agree with the whole of what is said in that judgment. I would, however, as I gather that they would, have taken the same view of this case if an examination of the statutory history of the plaintiff corporation had disclosed an entirely different result. The whole question seems to me to be whether the plaintiff *is* "the Crown" within the meaning of s. 5 of the *Landlord and Tenant (Amendment) Act*, 1948-1949 (N.S.W.), which provides that that Act shall not bind the Crown in right of the State. That Act is concerned throughout with "leases", as defined, and with the rights of parties to "leases", as defined. The "lessor", for the purposes of these cases, is not the Crown

but a statutory corporation formerly known by a different name but now known as the Rural Bank of New South Wales. It cannot, to my mind, matter whether the statutory corporation "holds" the "real property", which it has "leased" to the defendants, for and on behalf of the Government of New South Wales or for and on behalf of anybody else. It is the legal owner of the property leased. It, and it alone, has the rights of a legal owner of that property. It alone could maintain an action for rent, or an action for breach of covenant, or exercise a right of re-entry. The Crown could maintain no such action, or exercise any such right. The rights which are not to be affected by the *Landlord and Tenant (Amendment) Act* are rights of the Crown, and the rights asserted in these proceedings are not rights of the Crown. They are, therefore, qualified by the provisions of the *Landlord and Tenant (Amendment) Act*.

It may well be that for other purposes the provisions of s. 19 of the *Government Savings Bank Amendment Act*, 1913-1945 (N.S.W.) affect the rights and liabilities of the plaintiff corporation in important respects.

One other thing I would mention. I was a party to the decision in *Victorian Railways Commissioners* v. *Herbert* (1) (which was cited in argument in this case), and I notice that in the course of the judgment in that case there was a reference to *Marks* v. *Forestry Commission* (2). I think I should say that the question of the correctness of that decision did not appear to me to arise in *Herbert's Case* (1), nor does it seem to arise in the present case.

Appeals dismissed with costs.

Solicitor for the appellant, *E. R. Payne.*
Solicitors for the respondent Hayes, *A. R. Baldwin & Co.*
Solicitor for the respondent McEvoy, *Frank E. Murray.*

J. B.

(1) (1949) V.L.R. 211. (2) (1936) V.L.R. 344.