

IN THE HIGH COURT OF AUSTRALIA

KRINGAS & ANOTHER

V.

TERRILL & OTHERS.

ORAL REASONS
REASONS FOR JUDGMENT

C. J. MacL. (Presiding)

*Copy of judgment
submitted by
C. J. MacL.
3/11/61
[Signature]*

Judgment delivered at Sydney

on Friday, 29th November, 1946.

CORAM : LATHAM, C.J.
RICH J.
STARKE J.
DIXON J.
McTIERNAN J.

KRINGAS and ANOTHER
v.
TERRILL and OTHERS

SYDNEY. 29th NOVEMBER. 1946

JUDGMENT

LATHAM C.J. : We are of opinion that this appeal should be dismissed. I put my judgment upon the ground that the evidence shows a tenancy by estoppel between the occupants of the room in question in Grace Building and the Commonwealth. There is a payment of rent as rent to persons who, in fact, were agents of the Commonwealth. The money was received as rent and receipts were given for it expressly as rent. There are accordingly, in my opinion, all the elements of a tenancy by estoppel. It may also be that under Section 22A of the Landlord and Tenant Act there is the evidence which is sufficient to establish the presumptions which are referred to. I, however, consider it sufficient to base my conclusion upon the ground which I have stated.

It is suggested that there is some impropriety or illegality or legal impossibility in the Commonwealth becoming a landlord of land which has been compulsorily acquired under the Lands Acquisition Act and which is not immediately required for utilisation for a public purpose. I can see no authority for that proposition.

The practical difficulty which has been suggested in relation to the time limitation placed upon the warrant issued under Section 22 of the Landlord and Tenant Act does not appear to me here to require any special consideration by the Court. Apart from the proceedings in the Supreme Court, the provisions of Section 59 of the Lands Acquisition Act would appear to form a speedy method of dealing with the case.

In my opinion the appeal should be dismissed with costs.

RICH J. : I agree that the appeal fails. In my opinion the facts bring the case within the provisions of Sec. 22A of the Landlord and Tenant Act, 1899, New South Wales.

STARKE J. : I agree that the appeal should be dismissed.

29/11/46.

DIXON J. : I agree. It has not been contended that the Crown cannot take the benefit of Part IV of the Landlord and Tenant Act of 1899 (New South Wales.) It appears to me that in a situation such as arose from the compulsory acquisition by the Commonwealth of such a building as that now in question it is competent for the Commonwealth, as an incident of the exercise of the power, to continue the existing tenants in occupation pending taking vacant possession and to receive the rents payable by them in respect of their occupation. Paragraph (a) of sec. 22A of the Landlord and Tenant Act creates, not an actual tenancy, but a conclusive presumption for the purposes of Part IV, that is to say, upon the facts to which it applies occurring, the remedies provided by Part IV become available. Those facts are the payment by a person of rent in respect of land. The receipt of rent by the agent of the Commonwealth involved payment by the appellants of rent in respect of the premises they occupied and I do not think that they have shown that the payment was made under any mistake or other invalidating circumstance that would prevent the attaching of Part IV pursuant to paragraph (a) of sec. 22A.

Therefore, the appeal should be dismissed.

MCTIERNAN J. : I agree that the appeal should be dismissed.

O R D E R

LATHAM C.J. The appeal is dismissed with costs.

29/11/46

J U D G M E N T

RICH, J.

KRINGAS & ANOTHER

v.

TERRILL & OTHERS.

I agree that the appeal fails. On my opinion the facts bring the case within the provisions of Section 22 (A) of the Landlord & Tenant Act 1899 New South Wales.

J U D G M E N T.

STARKE, J.

KRINGAS & ANOTHER

v.

TERRILL & OTHERS.

I agree that the appeal should be dismissed.

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ORAL JUDGMENT

DIXON J.

I agree. It has not been contended that the Crown cannot take the benefit of Part IV of the Landlord and Tenant Act of 1899 (N.S.W.). It appears to me that in a situation such as arose from the compulsory acquisition by the Commonwealth of such a building as that now in question it is competent for the Commonwealth, as an incident of the exercise of the power, to continue the existing tenants in occupation pending taking vacant possession and to receive the rents payable by them in respect of their occupation. Paragraph (a) of sec. 22A of the Landlord and Tenant Act creates, not an actual tenancy, but a conclusive presumption for the purposes of Part IV, that is to say, upon the facts to which it applies occurring, the remedies provided by Part IV become available. Those facts are the payment by a person of rent in respect of land. The receipt of rent by the agent of the Commonwealth involved payment by the appellants of rent in respect of the premises they occupied and I do not think that they have shown that the payment was made under any mistake or other invalidating circumstance that would prevent the attaching of Part IV pursuant to paragraph (a) of sec. 22A.

Therefore, the appeal should be dismissed.