

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of The
Country Estates Company Limited v. Graves ;
from the Supreme Court of the Colony of
Victoria ; delivered 14th December 1894.*

Present :

THE LORD CHANCELLOR.

LORD WATSON.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD SHAND.

[*Delivered by Lord Macnaghten.*]

THIS Appeal has been argued before their Lordships *ex parte*. By the Land Tax Act, 1877, which is now replaced by the Land Tax Act, 1890, a land tax was imposed on owners of landed estates in Victoria of upwards of 640 acres in extent: the owner of an estate of less than that quantity is not liable to land tax.

It seems that the trustees of one, John Hepburn, were the owners of a large property in Victoria, and were entered on the Land Tax Register in respect of it. The Appellants contracted to buy about 2,000 acres of the property from them, with the view of reselling in lots. They agreed to sell one lot of about 292 acres to the Respondent. They therefore agreed to sell and the Respondent agreed to buy a parcel of land, to the ownership of which no liability to land tax attached. The contract between the Appellants and the Respondent was dated the 14th December 1887. Possession was to be given on the 17th March 1888, from which date interest was to run. A deposit was paid down, and the balance was payable when the title was "procurable." The contract states on the face of

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it that the property—that is the property offered for sale in lots—was being brought under the provisions of the “Transfer of Land Statute,” and that the vendors guaranteed the issue of a clean certificate of title. There was also a provision that “all rates and other outgoings” should “be adjusted as usual.”

On the 17th June 1890 the Appellants gave the Respondent notice that they were ready to settle, but they refused to complete unless the Respondent would consent to bear a proportionate part of the land tax which Hepburn’s trustees had paid, and in respect of which under some arrangement, the particulars of which are not stated, the Appellants had agreed to indemnify Hepburn’s trustees so far as the payment was attributable to the property which they had contracted to buy. The Respondent refused to submit to the Appellants’ demand, and this suit was then brought to try the question. The Court of First Instance and the Full Court have both decided against the Appellants. Their Lordships think the decision perfectly correct.

The claim of the Appellants was originally presented in two ways. In the first place it was put on general principles. This ground seems to be neither more nor less than a vague notion that the payment was one in which the Respondent was somehow or other interested. When the circumstances are examined it is plain that the payment by the Appellants was made, either for their own benefit, or in pursuance of an obligation which they had undertaken and which they had not transferred either in whole or part to the Respondent. It was not made in any sense at the request of the Respondent or on his behalf. This ground was abandoned during the argument. The Appellants were then forced to fall back on the provision in the contract with respect to outgoings. But the outgoings there mentioned are

outgoings in respect of the property contracted to be purchased, not in respect of the larger property of which, in the hands of the vendors, it formed part. They are outgoings which would enure to the benefit of the purchaser when he became owner; not outgoings the benefit of which and the liability to which would be necessarily determined when once the purchase was completed.

Their Lordships will therefore humbly advise Her Majesty that this Appeal should be dismissed.

