

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Minister for Lands v. Wilson, from the Supreme Court of New South Wales; delivered 2nd March 1901.

Present at the Hearing :

LORD MACNAGHTEN.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

[*Delivered by Lord Macnaghten.*]

This is an Appeal from an Order pronounced by the Supreme Court of New South Wales upon the hearing of a special case stated by the Land Appeal Court for the purpose of determining certain questions arising in a case before that Court brought by way of Appeal by the Respondent James Wilson from a decision of the Local Land Board of Gunnedah.

The Gunnedah Land Board was directed by the Minister for Lands under Section 20 of the Crown Lands Act of 1884 to investigate and decide the question whether certain statements made by the said James Wilson on his application for a conditional purchase of lands in the land district of Walgett which was in part successful were false within the meaning of Section 26 of the Act and also whether a certain deposition made by him in support of those statements was misleading within the meaning of Section 135. The Gunnedah Land Board was also directed by a subsequent order under Section 20 to investigate and decide the question

whether the Assets Realisation and General Finance Company Limited who claimed to be mortgagees of the land conditionally purchased took their alleged mortgage with notice or knowledge of the false statements if any made by Wilson.

The Gunnedah Land Board determined to hold their investigation into the several questions referred to them at one and the same time and as parts of one and the same enquiry. For this purpose the Board sat at Gunnedah on the 31st of January 1896 and on several days following. They then adjourned to Sydney with the sanction of the Minister for Lands and continued and completed the enquiry there. The hearing occupied 47 days in all.

On the 13th of April 1896 the Board gave their decision at Sydney. They found that Wilson's statements were false and that the Assets Realisation and General Finance Company Limited took their alleged security with notice and knowledge of the falsity of those statements.

From that finding the mortgagees did not appeal. Wilson appealed to the Land Appeal Court. After an argument which lasted 16 days that Court affirmed the finding of the Land Board against Wilson and dismissed his Appeal.

Thereupon at Wilson's instance the Land Appeal Court under Section 8 Sub-section 6 of the Crown Lands Act of 1889 stated and submitted to the Supreme Court of New South Wales a special case setting forth the following questions as questions of law :—

“ 1. Whether the Gunnedah Local Land Board had jurisdiction to enquire into the “ matters ” referred to them ?

“ 2. Whether the proceedings before the said Board did or did not amount to a mis-trial or “ were or were not contrary to natural justice

“ or did or did not amount to a denial of
“ justice?”

“ 3. Whether under the circumstances ” set forth in the special case “ the Land Appeal Court “ could lawfully reject from the said Board’s “ finding all matters considered by the said “ Court not to be relevant ” to the first reference “ and after rejecting the evidence held to “ have been wrongfully admitted could lawfully “ decide on the evidence held relevant to the “ reference?”

“ 4. Whether in regard to the evidence “ held to be properly before the Court the “ Land Appeal Court possesses the power or “ right to draw inferences analogous to that “ possessed by a single Judge in bankruptcy or “ equity.”

The special case came on for argument on the 15th of November 1897 and the three following days. Then it was referred back to the Land Appeal Court to be restated. It does not however appear on the Record for what reasons the case was referred back or in what respects it was amended. It came on for argument again on the the 1st of November 1898; it was further heard during two days in February 1899 and four days in the following March. On the 5th of May 1899 the Court consisting of Darley C.J. and Owen and Simpson J.J. made an order simply directing that the Appeal of the said James Wilson be allowed with costs.

Although the order of the Supreme Court does not answer specifically the questions submitted for decision the views of the learned Judges upon those questions are apparent from their judgments. Darley C.J. was prepared to answer the first second and fourth questions in the affirmative and the third question in the negative. Owen J. answered the first and second

questions in the affirmative and gave no answers to the third and fourth. Simpson J. also answered the first and second questions in the affirmative. He gave no answer to the fourth question but he added that he thought "it was almost impossible for the Land Court to adopt with any satisfactory result the course referred to in the third question."

Now the Supreme Court is not a Court of Appeal from the Land Appeal Court. Still less is it a Court of Appeal from a Local Land Board. The jurisdiction of the Supreme Court under the Crown Lands Act of 1889 is confined to giving a decision upon such questions of law as may be submitted to it by the Land Appeal Court. With questions of fact it is not concerned. The investigation and decision of all questions of fact on a reference under the Act of 1884 is committed to the Land Board subject to an appeal to the Land Appeal Court on which by leave of the Court fresh evidence may be admitted. The decision of the Land Board if there is no appeal or the decision of the Land Appeal Court on appeal subject only to the opinion of the Supreme Court on questions of law arising in the case and submitted by the Land Appeal Court to the Supreme Court is by statute made final and conclusive.

Questions 1, 3 and 4 may be disposed of in a very few words.

As regards Question 4 assuming that a question as to the capacity and competence of the Court itself is a "question of Law arising in a case before the Land Appeal Court" within the meaning of Section 8 Sub-section 6 of the Crown Lands Act of 1889 it seems to be rather like solemn trifling to inquire whether a tribunal which possesses the jurisdiction and holds the position of the Land Appeal Court has the power of drawing reasonable inferences of fact from

evidence properly before it. Without that power no Court or Judge whose duty it is to review evidence could hope to deal with questions of fact.

Question 3 seems to answer itself. Every tribunal which has to review the findings of an inferior Court must have the power of rejecting or disregarding evidence which it deems irrelevant. The mere fact that the irrelevant matter is vastly in excess of that which is relevant does not of itself increase the difficulty. Special care may perhaps be required in sifting the materials before the Court lest something of value should be overlooked in the mass of irrelevant rubbish. But the difficulty whatever it may be is involved in the duty imposed upon the Land Appeal Court by statute, a duty which it is not competent for the Court to decline even though it may seem to be beyond the strength of any tribunal but the highest in the land.

As regards Question 1 the learned Chief Justice doubts whether the Legislature could really have intended to impose upon a lay tribunal such as a Land Board the duty of determining questions of so great nicety and difficulty as those supposed to be involved in the second reference to the Land Board of Gunnedah. It is enough to say that it appears to their Lordships as it appeared to the learned Judges of the Supreme Court who were associated with the Chief Justice that the language of Section 20 of the Crown Lands Act of 1884 is perfectly clear and that both the enquiries referred to the Land Board by the Minister for Lands are within the express words of the section.

There remains Question 2. That question in its terms is general and somewhat vague. Many of the points which the Supreme Court took to be within it may be laid aside.

Neither the Supreme Court acting under the provisions of the Act of 1889 nor this Board has any power to correct the errors or shortcomings of a Local Land Board. That duty belongs to the Land Appeal Court. If there was an error in treating the two references as parts of one and the same enquiry that error has been corrected by the proper Court. But their Lordships may observe in passing that they are not satisfied that there was any error in the procedure of the Land Board in this particular matter. Obviously the mortgagees were interested in maintaining Wilson's conditional purchase. Obviously Wilson was interested in upholding the security of his mortgagees whether his interest in the land was or was not liable to forfeiture. If the Crown had been suing in equity for a declaration that the purchase was void and the mortgage void too on the ground of fraud both the purchaser and the mortgagees must have been made parties to one and the same suit. In the present case as it seems to their Lordships it was merely a question of convenience whether the two references should be taken separately or together and their Lordships cannot say that the Land Board was wrong in the course which it adopted though the enquiry may have been conducted in a manner which does not reflect much credit on those by whom it was prosecuted. Then there were questions raised but not pressed before the Land Appeal Court or their Lordships as to evidence received and evidence rejected by the Land Board. Again these questions were for the Land Appeal Court and the Land Appeal Court seems to have dealt with the matter properly. It was said that some evidence which Wilson might or would have given was shut out by the Land Board. No doubt the Land Board was wrong in this matter but Wilson's case does not seem to have been prejudiced in the slightest

degree by this error and there can be no doubt that if Wilson's Counsel had applied to the Land Appeal Court to take his answers on the questions which were not admitted by the Land Board the Land Appeal Court would have assented to that course. But it would have been a very idle and injudicious application and naturally enough no such application was made.

Putting aside the question as to the sitting at Sydney with which their Lordships will deal presently it seems hardly accurate to speak of the proceedings before the Land Board as a mis-trial as if the enquiry had been a trial before a jury in a case in which miscarriage would necessitate a new trial before another jury. The Land Appeal Court is a Court of rehearing as well as a Court of Appeal and unless the whole proceedings before the Land Board were a nullity from beginning to end there would be no necessity for the Land Appeal Court or the Minister for Lands to remit the enquiry to the same or to another Land Board.

The question whether it was competent for the Land Board of Gunnedah with the sanction of the Minister for Lands to sit at Sydney is a question of importance and of some difficulty. But their Lordships are of opinion that the Land Appeal Court came to a right conclusion on the point.

The question turns upon the true meaning and effect of Section 5 of the Crown Lands Act of 1889 and the regulations made in pursuance of that Act. These regulations were made under the powers of Section 53 of the Act which authorises the Governor "for the purpose of carrying the "Act into full effect" to make regulations "which shall upon being published in the "Gazette be good and valid in the law."

Section 5 of the Act of 1889 so far as is material is in the following words:—

"5. It shall be lawful for the Minister from
"time to time to direct any Local Land Board to

“ deal with any matter question or enquiry that
“ has arisen or shall arise without regard to the
“ Land Board District or Land District in which
“ the land forming the subject of such matter
“ question or enquiry may be situated. And the
“ said Land Board shall have as full power and
“ jurisdiction to deal with the matter as if the
“ land aforesaid were situated within that Board’s
“ proper Land Board District or Land District.”

The meaning of that section seems tolerably plain. When any question arises as to any land wherever it may be situated the Minister for Lands if he thinks proper may put aside the Land Board of the District which would in ordinary course be called upon to deal with the question and refer the matter to any Land Board he may select. So far there is nothing to limit or govern his choice as between one Land Board and another. When a Land Board is selected to try a question that has arisen outside its own district it is to have the same power of dealing with that question as if the land were within the area of its local jurisdiction but the Act does not require or suggest that the land “forming the subject” of the enquiry is to be regarded as annexed to or incorporated with the Board’s proper district, and that the Board is to proceed upon that footing. The members of the Land Board selected for the occasion are simply in the position of commissioners duly appointed by competent authority to conduct a particular inquiry. If the Commission is silent as to the place of sitting it would be for the Commissioners to hold their enquiry where they found it most convenient. In the present case the Act says nothing about the place of sitting. The omission if it be an omission is supplied by the regulations made by the Governor under the powers of the Act. That is just one of those details which regulations framed to carry the Act into full effect

are intended to supply. The regulation in question was No. 7 of the Crown Lands Regulations gazetted on the 2nd of December 1889. That regulation provides that "all proceedings in open court shall be holden at some convenient place within the Land District wherein the land forming the subject of investigation is situated unless the Minister otherwise allow or direct," and is now re-enacted in substantially the same terms by No. 19 of the Regulations gazetted on the 3rd of June 1895. The words taken in their natural and ordinary signification seem to give the Minister for Lands power to direct the enquiry to be held or to sanction its being held at any place he may think fit. It seems to their Lordships that there is no reason for narrowing the meaning of the language used. It was said that such a power might be used oppressively. Any discretionary power may be abused but it seems to their Lordships that even a power so wide as this may safely be committed to a Minister of the Crown responsible to Parliament. Then it was urged that the Act and the Regulation merely empower the Minister for Lands to direct the enquiry to be held in one of several districts forming a Land Board District though the district selected may not be the one in which the subject of the enquiry may be situated. Their Lordships however think that this is too narrow a construction and they cannot accept it. It would practically limit the choice of the Minister to Land Boards in the vicinity of the land the subject of the enquiry and it would give the Minister no choice at all as to the place of sitting except in the case of a Land Board "for several Land Districts."

In the result their Lordships are of opinion that the order of the Supreme Court must be discharged and that the case should be remitted to the Land Appeal Court with an intimation

that Questions 1, 3 and 4 ought to have been answered in the affirmative and that so far as it is necessary or proper to answer Question 2 that Question should be answered by stating that it was competent for the Land Board with the sanction of the Minister for Lands to hold their sittings in Sydney. Their Lordships will humbly advise His Majesty accordingly.

The Respondent must pay the costs in the Supreme Court and the costs of this Appeal.
