

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Riddiford v. The King, from the Court of Appeal of New Zealand; delivered the 8th February 1905.

Present at the Hearing :

THE LORD CHANCELLOR.

LORD MACNAGHTEN.

LORD ROBERTSON.

LORD LINDLEY.

SIR FORD NORTH.

[*Delivered by Lord Macnaghten.*]

The action which has led to this Appeal was brought by the Crown to recover certain lands in the Provincial District of Wellington known as Allotments 18 and 19, Section XI., Lower Hutt District. Mr. Edward Joshua Riddiford, who had been in possession of the lands in dispute for many years, defended the action and resisted the claim of the Crown on various grounds.

In the Supreme Court the action was dismissed by Edwards, J., who tried the case without a Jury. His decision, however, was reversed in the Court of Appeal, and there judgment was given for the Crown.

There are no facts in dispute. Nor is the case, in their Lordships' view of it, embarrassed by any difficult questions of law. In order to explain the position of the parties and their relative rights, it will only be necessary to give a brief history of the property, accompanied by a summary of the principal Statutes and Ordinances bearing on the question which were referred to in the course of the argument.

It seems that before the year 1839 an association had been formed in London to promote the colonization of New Zealand, then a dependency of the Colony of New South Wales. The association was originally unincorporated and called the New Zealand Land Company. It was afterwards incorporated under the name of the New Zealand Company by Letters Patent dated the 12th of February 1841. The object of the Company both before and after its incorporation was to acquire land in New Zealand from the Maoris or aboriginal inhabitants for the purpose of forming settlements and parcelling out the land for sale to intending emigrants. The practice was for the Board of Directors to issue to each purchaser a document of title, called a "Land Order," authorizing him to select a section of land consisting of one town acre and 100 country acres in a particular settlement. The order purported to be addressed to the Resident Officer of the Company for Saleable Lands. It stated that payment had been made for the purchase with the right of selection attached to it, and directed the Resident Officer, on the selection being made, to issue a certificate under his hand which, in the words of the order, was to be "accepted as conclusive evidence of the selection and as an actual delivery of the possession of the land selected." The order then provided for the execution of a conveyance to the purchaser, if required, but it was expressly stipulated that the persons executing the conveyance were not to be "considered as guaranteeing the title against the results of any proceedings of or under the authority of the British Government or Legislature."

On the 1st of August 1839, a Mr. Thomas Mitchell Partridge purchased a land order under which he selected a town acre in Wellington and a country section known as Section XI., Lower

Hutt District. He was a merchant in Wellington at the time, and in partnership with one Fitzherbert. The purchase was made with partnership funds. Partridge and his partner divided the section into allotments and put it up for sale by public auction in 1841. Some allotments were sold, but Allotments 18 and 19, the lands now in dispute, did not find a purchaser. The partnership was dissolved soon afterwards, and those two allotments, which contained about 5 acres apiece, were made over to Partridge in severalty as part of his share of the assets.

New Zealand was separated from the Government of New South Wales and erected into a Colony by Royal Charter dated the 16th of November 1840. At that date there was a Commission in existence which had been appointed under an Act of the Legislature of New South Wales, passed in 1840, for the purpose of enquiring into all claims to grants of land in New Zealand. When New Zealand became an independent colony this Commission was determined and replaced by an Ordinance of the Legislature of New Zealand known as "Land Claims Ordinance No. I. (New Zealand)." Adopting the provisions of the New South Wales Act of 1840, it declares (Section 2) that "all unappropriated lands within the said Colony of New Zealand subject however to the rightful and necessary occupation and use thereof by the aboriginal inhabitants of the said Colony are and remain Crown or Domain Lands of Her Majesty her heirs and successors . . . and that all titles to land in the said Colony of New Zealand which are held or claimed by virtue of purchases or pretended purchases gifts or pretended gifts conveyances or pretended conveyances leases or pretended leases agreements or other titles either mediately or immediately from the Chiefs or other

“ individuals or individual of the aboriginal tribes
“ inhabiting the said Colony and which are not
“ or may not hereafter be allowed by Her
“ Majesty her heirs and successors are and the
“ same shall be absolutely null and void.” Then
provision was made for the appointment of
Commissioners to enquire into and report on all
cases in which lands were claimed under titles
derived from the aboriginal inhabitants.

On the 29th of July 1845, after due enquiry
and Report, a Crown grant of a large tract of
land which comprised Section XI. Lower Hutt
District was issued to the Company.

The Company thus acquired the legal estate
in the lands selected by Partridge under his
Land Order of the 1st of August 1839. And
Partridge obtained a valid equitable title to
Allotments 18 and 19.

By an Imperial Act passed in 1846 (9 and
10 Vic. c. 382) further powers were granted
to the Company, and provisions were made
intended to facilitate the execution of Con-
veyances by or on behalf of the Company to
persons entitled to grants of land under Land
Orders.

By another Imperial Act passed in 1847
(10 and 11 Viet. c. 112) intituled “ An Act to
“ promote Colonization in New Zealand and to
“ authorize a Loan to the New Zealand Com-
“ pany ” certain further powers were granted to
the Company. And then, by Section 19, after
reciting that it was expedient to provide for the
contingency of the Company finding themselves
unable to continue their proceedings with profit
to themselves and benefit to the Colony, it was
enacted that if the Directors should give notice
as therein mentioned within three calendar
months next after the 5th of April 1850 that
they were ready to surrender the Charters of the
Company to Her Majesty, and all claim and title

to the lands granted to them in the Colony, all the powers and privileges of the Company (except such as should be necessary for enabling the Directors to receive the several sums of money thereafter mentioned and to distribute the same amongst the shareholders and other persons entitled thereunto, and for enabling the directors to adjust and close the affairs of the Company) should cease and determine and all the lands, tenements, and hereditaments of the Company in the Colony should "thereupon revert to and become vested in Her Majesty as part of the demesne lands of the Crown in New Zealand subject nevertheless to any contracts which" should "then be subsisting in regard to any of the said lands," and upon a condition which does not affect the present question.

In 1849 another Imperial Act (12 and 13 Vict. c. 79) was passed to facilitate the execution of conveyances and other instruments by or on behalf of the Company in New Zealand, and on the 1st of October of that year the Directors of the Company issued a notice in London to the effect that the Company, having received Crown grants, was prepared to execute conveyances to owners of land in the Company's Settlements in the Colony in accordance with the original Land Orders and the Act of 1846.

On the 4th of July 1850 the Company gave due notice of surrender in accordance with the provisions of the Act of 1847, and thereupon Section XI. Lower Hutt District, of which no conveyances or conveyance had been executed by or on behalf of the Company, together with all other lands, tenements, and hereditaments of the Company in New Zealand reverted to and became vested in the Crown as part of the demesne lands of the Crown in New Zealand.

It appears from an entry in one of the Company's Records called the "Selection Book"

that Thomas Mitchell Partridge, the purchaser of Section XI., died at Sydney, New South Wales, some time before the 20th of December 1851.

No application to the Crown for completion of the Company's contract with Partridge was made by him in his life time. Nor has any such application ever been made since his death by any person claiming to be entitled to the benefit of that contract in respect of Allotments 18 and 19. It was stated at the Bar that it is not known who are Partridge's heirs or sequels in right.

Allotments 18 and 19 seem to have been left derelict at the time of Partridge's death. They were then of little or no value. They were liable to the incursion of the sea at spring tides and occasionally at ordinary high tide, and they were consequently unfit for habitation. However, there was a great earthquake and upheaval of land near Wellington in 1855 which had the effect of improving the land by raising it permanently several feet. There is some evidence to show that, at some time between Partridge's death and 1870, one Cook who was the owner of an allotment in Section XI. was in the habit of allowing his cattle to stray over Allotments 18 and 19, but there is no proof that at any time between those dates any person was in possession of the land or that Cook himself made any claim to it. In 1870 a man named Braithwaite, who is said to have been a farmer in the neighbourhood, entered upon the land and held possession until 1885, when he sold his interest for 75*l.* to the Appellant and executed a conveyance to him. So that the Appellant may be taken to have a title by possession going back to 1870, but no further.

After the lands of the New Zealand Company reverted in the Crown, the Legislature of New Zealand made ample and elaborate provisions for

enabling all persons claiming the benefit of contracts with the Company to come in and prove their title in order that all contracts under land orders might be completed by grants from the Crown. The earliest enactment was "The New Zealand Company's Land Claimants' Ordinance, 1851." It is stated in one of the recitals to that Ordinance that no conveyances were made by the Company pursuant to the provisions of the Imperial Act of 1846. Commissioners were to be appointed to enquire and report and a simple form of procedure was prescribed. The time limited for the settlement of claims was short, but there were provisions for extending it, and it was extended from time to time. In 1892 an Act was passed declaring that claims not finally disposed of on the 30th of June 1894—a period afterwards extended to the 30th of June 1896—should be deemed to have lapsed unless the time were extended by the Supreme Court. Every claim when declared lapsed was to be deemed abandoned, and on the publication of the list of lapsed claims the land was to be deemed to be demesne lands of the Crown discharged and free from all contracts and engagements whatever.

Mr. Riddiford of course is not concerned with the legislation consequent upon the revesting of the Company's lands in the Crown. He does not claim and indeed he never pretended to claim the benefit of any contract with the Company. But in order to complete the story, some reference to that legislation was necessary, and incidentally it affords an explanation of the circumstances under which the provision for revesting was made and suggests the reason why that course was adopted.

Edwards J. decided in favour of the Defendant on the ground that a Crown grant ought to be presumed. This view was not pressed at the

Bar. Their Lordships agree with the Court of Appeal that there is no room for such a presumption in the present case unless indeed a Crown grant is to be presumed in every case in which an intruder on Crown property has been in possession for a period long enough to extinguish the title of a private owner out of possession.

Before this Board the argument on behalf of the Appellant was rested mainly on the Statute of Limitations in force in New Zealand which is a reproduction of the Act 3 & 4 Will. IV. c. 27. It was argued that a purchaser who had selected a section under his land order, would be secure in relying on his equitable title, and was not obliged to come in and prove his claim to a Crown grant—a position which seems to have commended itself to the late Chief Justice, though the present Chief Justice takes a different view. Then it was contended that, inasmuch as Partridge's equitable title was extinguished, the Defendant somehow or other got the benefit of the position that Partridge's representatives had lost. The Crown, it was said, was a bare trustee of the legal estate, and when once the *cestui que trust* was barred, the legal estate vanished or followed the ownership of the land. At any rate, the Crown was not justified in interfering and confiscating Mr. Riddiford's interest for the sake of the unknown heir of a deceased absentee, still less for its own ultimate profit.

The argument was somewhat difficult to follow, and it may be that an attempt to present it in a condensed form does not do it full justice. But it is not necessary to examine the position critically, because in their Lordships' opinion there is a fallacy lying at the root of the argument. In their view the Statute of Limitations has nothing to do with the question.

In their Lordships' opinion it is a mistake to suppose that when the Company surrendered its charter the Crown assumed the position which the Company had occupied before the surrender. All the property of the Company, lands which had been bought and actually selected under land orders as well as lands which had never been dealt with or offered for sale, reverted to and vested in the Crown in absolute and unqualified dominion. In one and the same character the Crown took over all alike. It did not become owner of part and trustee of part. No trust, cognizable and enforceable by any court of law or equity, was created by the operation of the Statute of 1847. The Crown, no doubt, took upon itself the obligation of completing all the contracts of the Company. That was a solemn engagement, announced publicly, on the faith of which the Company surrendered its charter. It is impossible to suppose that such an engagement would not be scrupulously fulfilled to the very letter. But suppose there were a failure on the part of the Crown in carrying out its engagement (if it be permissible for the sake of argument to make such a supposition) no court of law or equity could give relief. The only remedy would lie in representation and remonstrance addressed to the advisers of the Crown.

It may perhaps be asked, why was all the property of the Company vested in the Crown in absolute ownership? The answer may be found in the New Zealand Company's Land Claimants' Act passed in 1892. It appears from a recital in that enactment that in Wellington and four other provinces various town, rural, and suburban sections of land had remained unclaimed for a period of upwards of thirty years and, "in the interests of settlement," as the Act proceeds to declare, it was not expedient that any such

claims should remain open for an indefinite period. Now the mischief which attracted the attention of the legislature in 1892—the mischief resulting from lands lying derelict and unproductive, in many cases probably in the choicest sites in town and country—must have been even more serious in the early and less prosperous days of the Colony. What was the Government to do? If the legal estate in every section paid for and selected under a land order had been vested by statute in the purchaser, the mischief would have continued unchecked. There would have been no pressure on a purchaser who was content to leave his property to take care of itself to come forward and claim it. If the Crown had assumed the position of trustee in the case of these unclaimed lands the mischief would have been aggravated, for in that case the owner, if the purchaser or the purchaser's representative may be called the owner, would not be liable to have his title extinguished by the Statute of Limitations. He would have the benefit of the more lengthened period required to extinguish the title of the Crown.

Now, if the view that has been indicated as to the position of the Crown be the true view, it is obvious that there is nothing special about the case at all. The Defendant is in possession of Crown property, but he has not been in possession long enough to acquire title against the Crown. He is simply an intruder without any right, title, or equity to support his claim.

Their Lordships therefore are of opinion that the Judgment of the Court of Appeal ought to be affirmed, and they will humbly advise His Majesty accordingly.

The Appellant will pay the costs of the Appeal.
