

19 of 1977

IN THE PRIVY COUNCIL

No. 4 of 1977

O N A P P E A L

FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN

EWEN NEIL ROSS

Appellant

- and -

JOHN SAMUEL LESTER HENDERSON

Respondent

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CASE FOR THE APPELLANT

1. This appeal is brought from a judgment of the Court of Appeal of New Zealand ([1976] 2 N.Z.L.R. 589) dated 22 July 1976 dismissing the appellant's appeal from a judgment (unreported) of the Supreme Court of New Zealand dated 21 January 1976.

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pp.67-68

pp.54-55

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2. With respect to one of the issues in this case the decision of the Court of Appeal in Harding v. Coburn [1976] 2 N.Z.L.R. 577, in which judgment was delivered on the same day as the judgment of that Court in the present case, is also under review.

3. The issues in this appeal arise out of the following circumstances.

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4. By a document known as a memorandum of lease dated 24 May 1971 and executed by the appellant as lessor and by the respondent as lessee the appellant leased to the respondent his freehold farm property therein described for a term of 5 years from 1 June 1971 upon and subject to the terms and conditions

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thereof. The memorandum of lease contained a provision in Clause (vv) in the following terms:

(vv) If the lessee shall at any time during the term hereof have given to the lessor two calendar months previous notice in writing of his intention to in that behalf the lessee shall have the right to purchase the whole of the land herein-before described at the expiry of the said notice at the price of SIXTY FIVE THOUSAND DOLLARS (\$65,000.00) which sum shall thereupon be payable as to the sum of SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500.00) upon the giving of the said notice and as to the balance and usual apportionments in cash at the expiry PROVIDED HOWEVER that the purchaser within fourteen (14) days of the giving of such notice either prepare and file with the District Land Registrar Hamilton a declaration in accordance with the requirements of the Land Settlement Promotion and Land Acquisition Act 1952 or shall otherwise supply sufficient declaration in accordance with the requirements of the said Act to enable application to be made for the consent of the Administration Division of the Supreme Court for the consent thereto.

5. The land in question was admittedly 'farm land' for the purposes of the Land Settlement Promotion and Land Acquisition Act 1952 (hereinafter referred to as the 'Land Settlement Promotion Act'). Both the leasing and the option were each independent transactions to which Part II (ss.23 to 35) of the Land Settlement Promotion Act applies. The relevant provisions of s.23 provide as follows:

(1) Subject to the provisions of this section, this Part of this Act shall apply to every contract or agreement -

(a) For the sale or transfer of any freehold estate or

3.

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interest in farm land, whether
legal or equitable:

- (b) For the leasing of any farm land
for a term of not less than 3
years:

... :

- (e) For the granting of an option
to purchase or otherwise acquire
any freehold ... estate or
interest in farm land as
aforesaid ...

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...

- (3) Except as provided in section 30 of
this Act, nothing in this Part of
this Act shall apply with respect to-

...:

- (q) Any contract or agreement for
the sale or transfer ... of
any estate or interest pursuant
to an option to which the
consent of the Court has been
granted under this Act

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6. The dominant provision of Part II of the
Land Settlement Promotion Act, with respect to
transactions to which it applies, is contained
in s.25. The following subsections of that
section are relevant to the present case:

- (1) Where any transaction to which this
Part of this Act applies is entered into,
the transaction shall be deemed to be
entered into in contravention of this Part
of this Act, unless -

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- (a) The transaction is entered into
subject to the consent of the
Court and an application for the
consent of the Court to the
transaction is made within 1 month
after the date of the transaction
or, in the case of a transaction
relating to land situated in the

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Chatham Islands, within 3 months after the date of the transaction or in either case within such further time as may be allowed by the Court or a Land Valuation Committee; or

(b) In any case to which section 24 of this Act applies, the statutory declaration referred to in that section is deposited with the District Land Registrar or the Registrar of Deeds within the time specified in that section. 10

(2) No person shall -

(a) Enter into any transaction in contravention of this Part of this Act whether as vendor, purchaser, lessor, lessee, or other party, and whether as principal or agent; or 20

(b) Procure or induce any other person to enter into any transaction in contravention of this Part of this Act.

(3) No person shall be entitled to any commission, reward, or other valuable consideration in respect of any transaction entered into in contravention of this Part of this Act.

(4) Where any transaction is entered into in contravention of this Part of this Act, or where any condition upon or subject to which the Court grants its consent to any transaction is not complied with, the transaction shall be deemed to be unlawful and shall have no effect. 30

(5) Where any transaction to which this Part of this Act applies is entered into subject to the consent of the Court, the transaction shall not have any effect unless the Court consents to it and the conditions upon or subject to which the consent is granted are complied with. 40

7. The Court to which reference is made in subsections (1)(a) and (4) and (5) is defined in s.2(1) to mean the

Administrative Division of the Supreme Court, including the additional members holding office under the Land Valuation Proceedings Act 1948, in the exercise of its jurisdiction under that Act.

10 The Administrative Division of the Supreme Court was constituted by s.25 of the Judicature Act 1908 (as substituted by s.2 of the Judicature Amendment Act 1968). By s.26 of the same Act (as similarly substituted) it was given jurisdiction to

hear and determine -

...

20 (b) Such proceedings, other than appeals, as are, under or by virtue of any enactment for the time being in force, to be heard and determined by the Division:

30 By s.27 of the Land Settlement Promotion Act it is provided that applications for the consent of the Court to any transaction entered into subject to the consent of the Court may be made in accordance with the Land Valuation Proceedings Act 1948 (formerly the Land Valuation Court Act 1948). Under that Act provision is made by s.22 for applications for the consent of the Court to be referred in the first instance to Land Valuation Committees, which are the tribunals referred to in various sections in Part II of the Land Settlement Promotion Act.

40 8. Section 25 provides an alternative mode of ensuring that a transaction shall not be deemed to have been entered into in contravention of Part II of the Land Settlement Promotion Act. That alternative mode is only available in any case to which s.24 applies. The relevant provisions of s.24 are as follows:

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(1) Notwithstanding anything in this Part of this Act, the consent of the Court shall not be required to any contract or agreement to which this Part of this Act applies where -

(a) The purchaser or lessee enters into the transaction solely on his own behalf as the person beneficially entitled thereunder and does not own, lease, hold, or occupy in fee simple or under any tenure of more than 1 year's duration, either severally, jointly, or in common with any other person, any farm land outside a city or borough or town district; and 10

(b) The purchaser or lessee has not after the passing of this Act transferred, granted, leased, or otherwise disposed of any estate or interest in farm land to any person as a trustee for any person or created any trust in respect of any estate or interest in farm land; 20

...

(d) The purchaser or lessee makes a statutory declaration as to the matters provided in paragraphs (a), (b), and (bb) of this subsection, and deposits that declaration with the District Land Registrar or the Registrar of Deeds, as the case may require, within 1 month after the date of the transaction or, in the case of a transaction relating to land situated in the Chatham Islands, within 3 months after the date of the transaction 30 40

Provided that nothing in this subsection shall apply in any case where the contract or agreement is a sale or transfer or lease by several persons of several estates or

interests in land, unless those persons are owners of those estates or interests as joint tenant or tenants in common.

(2) If a true copy of the declaration referred to in paragraph (d) of subsection (1) of this section is presented to the Registrar, he shall without payment of any fee certify on that copy that the original has been duly presented in accordance with the provisions of that paragraph.

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9. On 24 June 1971 a statutory declaration by the respondent covering the matters specified in s.24 was deposited by the respondent with the appropriate District Land Registrar.

pp.23-24

Subsequently, the appellant through his solicitors notified the respondent that the statutory declaration did not operate to include within the exception provisions of s.25(1)(b) of the Land Settlement Promotion Act the option evidenced in Clause (vv) of the memorandum of lease dated 24 May 1971.

pp.34-35

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In January 1975 the respondent, as plaintiff, brought an action in the Supreme Court of New Zealand at Rotorua praying for a declaration that the option was valid and enforceable.

pp.1-3

In the alternative, the respondent sought relief under the Illegal Contracts Act 1970, if it should be held that the option was illegal as having been entered into in contravention of the Land Settlement Promotion Act.

p.3, 11.15-17

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p.3,11.23-34

10. The Illegal Contracts Act 1970 introduces into New Zealand law a new dispensation from the rules of the common law and equity relating to illegal contracts. The relevant provisions of that statute are as follows :

2. Interpretation

In this Act, unless the context otherwise requires -

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...

'Enactment' means any provision of any Act, regulation, rules, bylaws, Order in Council, or Proclamation;

and includes any provision of any notice, consent, approval, or direction which is given by any person pursuant to a power conferred by any Act or regulations:

...

3. "Illegal contract" defined

..., for the purposes of this Act the term "illegal contract" means any contract that is illegal at law or in equity, whether the illegality arises from the creation or performance of the contract; and includes a contract which contains an illegal provision, whether that provision is severable or not.

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6. Illegal contracts to be of no effect

(1) Notwithstanding any rule of law or equity to the contrary, but subject to the provisions of this Act and of any other enactment, every illegal contract shall be of no effect and no person shall become entitled to any property under a disposition made by or pursuant to any such contract:

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Provided that nothing in this section shall invalidate -

(a) Any disposition of property by a party to an illegal contract for valuable consideration; or

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(b) Any disposition of property made by or through a person who became entitled to the property under a disposition to which paragraph (a) of this proviso applies -

if the person to whom the disposition was made was not a party to the illegal contract and had not at the time of the disposition notice that the property was the subject of, or the whole or part of the consideration for, an illegal contract and otherwise acts in good faith.

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(2) In this section the term "disposition" has the meaning assigned to that term by section 2 of the Insolvency Act 1967.

7. Court may grant relief

(1) Notwithstanding the provisions of section 6 of this Act, but subject to the express provisions of any other enactment, the Court may in the course of any proceedings, or on application made for the purpose, grant to -

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(a) Any party to an illegal contract; or

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(b) Any party to a contract who is disqualified from enforcing it by reason of the commission of an illegal act in the course of its performance; or

(c) Any person claiming through or under any such party -

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such relief by way of restitution, compensation, variation of the contract, validation of the contract in whole or part or for any particular purpose, or otherwise howsoever as the Court in its discretion thinks just.

(2) An application under subsection (1) of this section may be made by -

(a) Any person to whom the Court may grant relief pursuant to subsection (1) of this section; or

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(b) Any other person where it is material for that person to know whether relief will be granted under that subsection.

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(3) In considering whether to grant relief under subsection (1) of this section the Court shall have regard to -

- (a) The conduct of the parties; and
- (b) In the case of a breach of an enactment, the object of the enactment and the gravity of the penalty expressly provided for any breach thereof; and
- (c) Such other matters as it thinks proper;

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but shall not grant relief if it considers that to do so would not be in the public interest.

(4) The Court may make an order under subsection (1) of this section notwithstanding that the person granted relief entered into the contract or committed an unlawful act or unlawfully omitted to do an act with knowledge of the facts or law giving rise to the illegality, but the Court shall take such knowledge into account in exercising its discretion under that subsection.

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(5) The Court may by any order made under subsection (1) of this section vest any property that was the subject of, or the whole or part of the consideration for, an illegal contract in any party to the proceedings or may direct any such party to transfer or assign any such property to any other party to the proceedings.

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(6) Any order made under subsection (1) of this section, or any provision of any such order, may be made upon and subject to such terms and conditions as the Court thinks fit.

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(7) Subject to the express provisions of any other enactment, no Court shall, in respect of any illegal contract, grant relief to any person otherwise than in accordance with the provisions of this Act.

10 11. The present case came on for hearing in the Supreme Court at Rotorua (Beattie J.) on 18 and 19 November 1975. After hearing the evidence then adduced by the parties and the submissions of counsel, Beattie J. reserved his decision. In his judgment delivered on 21 January 1976 Beattie J. found in favour of the appellant on the first cause of action (namely, that the option was not valid and enforceable), but in favour of the respondent on the second cause of action (namely, that the option should be validated in whole pursuant to the provisions of s.7 of the Illegal Contracts Act). Judgment was accordingly entered in favour of the respondent.

pp.5-35

pp.36-54
p.44,11.15-17
p.53,11.24-25

p.54,11.21-24

pp.54-55

30 12. The appellant appealed to the Court of Appeal (Richmond P., Woodhouse and Cook JJ.) (inter alia) against that part of the judgment of the Supreme Court which held that the option should be validated in whole pursuant to the provisions of s.7 of the Illegal Contracts Act. The respondent cross-appealed against that part of the judgment which held that without the exercise of the Court's dispensing power under the Illegal Contracts Act, the option was not valid and enforceable. The appeal and cross-appeal were heard on 13 and 14 April 1976 together with two other appeals which raised the fundamental issue of the relationship between the Land Settlement Promotion Act and the Illegal Contracts Act. Those cases were Harding v. Coburn [1976] 2 N.Z.L.R. 577, which was argued first, and Broadlands Rentals Ltd. v. R.D. Bull Ltd. [1976] 2 N.Z.L.R. 595, which was argued third. On 22 July 1976 judgment was delivered by the Court of Appeal (per Cooke J.) reversing the judgment of Beattie J. in the Supreme Court on the first cause of action with the result that there was no need for the

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pp.57-58

p.58,11.19-24

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- p.67, 11.3-5 Court to decide whether there was jurisdiction under the Illegal Contracts Act to validate the option. Nevertheless, the
- p.67, 11.6-12 Court expressed the view in accordance with its decision in Harding v. Coburn delivered immediately before the delivery of judgment in this case that there was such jurisdiction and that it could properly have been exercised in this case. In the result the judgment of the Supreme Court in favour of the respondent was affirmed. 10
- p.67, 1.34

13. Three major issues arise in this case:

- A. Is the declaration procedure specified in s.24 of the Land Settlement Promotion Act available where the transaction in question is an option covered by s.23(1)(e) of that Act?
- B. Did the statutory declaration lodged by the respondent on 24 June 1971 satisfy the requirements of s.24 of the Land Settlement Promotion Act with respect to the option? 20
- C. Does the Court possess jurisdiction under the Illegal Contracts Act to validate in whole an option to purchase which s.25(4) of the Land Settlement Promotion Act provides that it shall be deemed to be unlawful and shall have no effect? 30

- A. Is the declaration procedure specified in s.24 of the Land Settlement Promotion Act available where the transaction in question is an option covered by s.23(1)(e) of that Act?

- 10 14. As to the first issue, Beattie J. considered that the opening words of s.24 refer to 'any contract or agreement' to which Part II of the Land Settlement Promotion Act applies, and that, since s.23(1)(e) showed that Part II applied to every contract or agreement for the granting of an option to purchase any freehold estate in farm land, the words of s.24 must include a contract or agreement for the granting of an option. Furthermore, the words 'purchaser or lessee' appearing in s.24 are sufficient to identify the person who is a party to the contract or agreement and who can make the statutory declaration. Accordingly, in Beattie J's opinion the procedure laid down in s.24 was available to the respondent in respect of the option contained in Clause (vv) of the memorandum of lease. p.43,11.11-20 p.42,11.20-26 p.42,11.33-37
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- 30 15. In its judgment delivered by Cooke J. the Court of Appeal expressed its agreement with Beattie J. and added further reasons for its judgment. Cooke J. considered that the word 'purchaser' in s.24 was used in a proleptic sense to include a person who will become the purchaser if the option to purchase is exercised. In his view that interpretation is supported by the use of the word 'purchaser' in s.35B(e), Part IIA of the same Act (inserted in 1968), in a sense which includes an option-holder. p.64, 1:8 - p.65,1.4 p.63,11.37-45 p.64,11.41-48
- 40 16. The appellant contends that the opinions of Beattie J. and of the Court of Appeal on this, the first main issue in the present appeal, were erroneous.

- B. Did the statutory declaration lodged by the respondent on 24 June 1971 satisfy the requirements of s.24 of the Land Settlement Promotion Act with respect to the option?

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17. As to this issue, Beattie J. held against the sufficiency of the statutory declaration with respect to the option to purchase. He considered:

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|--------------------------|-----|--|----|
| p.43,11.5-7 | (a) | that the respondent made his declaration as lessee and not as an option-holder; | |
| p.43,11.15-18 | (b) | that the declaration referred purely to the lease; | |
| p.43,11.22-30 | (c) | that the intention of the Land Settlement Promotion Act is to deal with particular transactions in s.23 and that there will be compliance with the statute in respect of each of the contracts or agreements into which parties enter; | 10 |
| p.43,11.32-34 | (d) | that the actual declaration was not consistent with its being a declaration with respect both to the lease and to an option to purchase; | 20 |
| p.43,11.34-36 | (e) | that Clause (vv) of the memorandum of lease is a separate contract or agreement to which the Land Settlement Promotion Act applies; and | |
| p.43,1.46 -
p.44,1.11 | (f) | that regulation 2 of the Land Settlement Promotion and Land Acquisition Regulations 1968 (S.R. 1968/246) specifying the form of statutory declaration as to the matters provided in s.24 was not complied with because the statutory declaration contained a basic deficiency. | 30 |
| p.44,11.12-17 | | Consequently, Beattie J. was of the opinion that the transaction incorporating the option (that is to say, Clause (vv) of the memorandum of lease) was deemed by s.25(4) of the Land Settlement Promotion Act to be unlawful and of no effect. | 40 |

18. In its judgment the Court of Appeal disagreed with Beattie J. as to the sufficiency of the declaration lodged by the respondent. In its judgment the matters essential in a declaration under s.24(1)(d) of the Land Settlement Promotion Act were all covered. The argument for the appellant that if a lessee of farm land has an option to purchase that land he must state in his declaration the capacities in which he is acquiring interests in the land was considered by the Court of Appeal to run counter both to paragraph (i) and to paragraph (j) of s.5 of the Acts Interpretation Act 1924. Those provisions are as follows:

5. General rules of construction

The following provisions shall have effect in relation to every Act of the General Assembly, except in cases where it is otherwise specially provided:

...

(i) Wherever forms are prescribed, slight deviations therefrom, but to the same effect and not calculated to mislead, shall not vitiate them:

(j) Every Act, and every provision or enactment thereof, shall be deemed remedial, whether its immediate purport is to direct the doing of anything Parliament deems to be for the public good, or to prevent or punish the doing of anything it deems contrary to the public good, and shall accordingly receive such fair, large, and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment according to its true intent, meaning and spirit:

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p.66,11.33-48

In differing from Beattie J's conclusion on this issue the Court expressed a preference for the view taken by Wilson J. in Ferguson v. Scott [1976] 1 N.Z.L.R. 611, which it considered to be right. It followed, in the opinion of the Court of Appeal, that there was no contravention in this case of Part II of the Land Settlement Promotion Act.

p.67, 11.1-3

19. The appellant contends that the opinion of the Court of Appeal on this, the second main issue in the present appeal was erroneous and that the opinion of Beattie J. in the Supreme Court was correct and that his judgment on the first cause of action, namely that the option to purchase was deemed to be unlawful and of no effect, should be restored.

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C. Does the Court possess jurisdiction under the Illegal Contracts Act to validate in whole the option which s.25(4) of the Land Settlement Promotion Act provides that it shall be deemed to be unlawful and shall have no effect?

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p.3,11.23-39

20. Since Beattie J. held that the option to purchase contained in Clause (vv) of the memorandum of lease was unlawful, it was necessary for him to consider whether the Court possessed jurisdiction under s.7 of the Illegal Contracts Act to validate in whole the option to purchase as sought in the prayer to the second cause of action in the respondent's statement of claim. In reaching the conclusion that s.25(4) of the Land Settlement Promotion Act falls short of limiting the grant of relief under the Illegal Contracts Act Beattie J. adopted the reasoning of McMullin J. in Dreadon v. Fletcher Development Co.Ltd. [1974] 2 N.Z.L.R. 11 and the approach of Chilwell J. in R.D. Bull Ltd. v. Broadlands Rentals Ltd. [1975] 1 N.Z.L.R. 304. Beattie J. considered that the Court possesses jurisdiction under s.7 of the Illegal Contracts Act to grant relief subject to an express provision to the contrary against the granting of relief. When viewed in that

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p.53,11.13-15

p.48, 1.12 -

p.49, 1.5

p.50,1.19 -

p.51,1.45

p.53,11.15-20

p.52,11.4-14

p.53,11.19-23

p.53,11.6-13

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way the words 'subject to the express provisions of any other enactment' appearing in s.7(1) of the Illegal Contracts Act give rise to no collision between s.7(1) of that Act and s.25(4) of the Land Settlement Promotion Act, because the latter subsection places no restriction upon the granting of relief. Accordingly, the Court possessed jurisdiction in this case to grant relief to the respondent by validating in whole the option to purchase contained in Clause (vv) of the memorandum of lease.

p.53,11.9-15

p.53,11.24-26

21. In view of the conclusion reached by the Court of Appeal that there had been no contravention in this case of the provisions of the Land Settlement Promotion Act with respect to the option to purchase there was no need for that option to be validated under the Illegal Contracts Act. If the need had arisen, the Court indicated its opinion that jurisdiction would have existed under the Illegal Contracts Act, as had been held by the Court in its judgment delivered immediately beforehand in Harding v. Coburn [1976] 2 N.Z.L.R. 577.

p.67, 11.3-5

p.67,11.6-12

22. In the judgment of the Court of Appeal in that case there was no patent inconsistency between s.25(4) of the Land Settlement Promotion Act that a contract shall have no effect and the fourth specific kind of relief authorised by s.7 of the Illegal Contracts Act, namely validation of the contract. The provision in the former Act was not intended to preclude judicial validation of a contract under powers given by a general law reform statute. In the opinion of the Court that view was supported by the use of the word 'express' in s.7(1) of the Illegal Contracts Act, a word that showed a legislative intention to require an obvious inconsistency before some other enactment is to prevail over the Illegal Contracts Act. It was also supported by the interpretation to be placed on s.7(7) of the same Act, which prevents the granting of relief at common law in respect of illegal contracts. The Court cited several examples of statutes which expressly make provision concerning relief to parties to illegal contracts and, which,

[1976] 2N.Z.L.
584 11.10-14

p.584,11.14-17

p.584,11.33-38

p.585,11.3-24

p.585,1.25 -
p.586,1.40

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- p.585,11.27-29 in the opinion of the Court, Parliament intended to leave standing and dominant.
- p.586,11.53-54 23. The Court considered that the words 'subject to the express provisions of any other enactment' in s.7(1) were in the nature of an exception clause and not to be extended by interpretation further than reasonably necessary. Since the provisions of s.25(4) of the Land Settlement Promotion Act did not make any express provision for relief, they were not inconsistent with the general power contained in a law reform statute to ameliorate the consequences as to relief. 10
- p.587,11.11-16
- p.581,1.47 - 24. In considering the mischief to be remedied by the Illegal Contracts Act the Court took account of the Report on Illegal Contracts presented in October 1969 to the Minister of Justice by the Contracts and Commercial Law Reform Committee, and noted²⁰ that the Land Settlement Promotion Act was among the measures indicated by that Committee as giving rise to the mischief to be remedied.
- p.582,1.3
- p.587,11.17-33
- p.582,11.1-3
- p.587,11.28-31
25. The appellant contends that the opinion of Beattie J. in the Supreme Court on this, the third main issue in the present appeal was erroneous, and that the judgment of the Court of Appeal in Harding v. Coburn should be disapproved. 30
26. On 29 November 1976 the Court of Appeal of New Zealand granted to the appellant final leave to appeal to Her Majesty in Council against the judgment of the Court of Appeal delivered on 22 July 1976.
27. The appellant contends that the judgment of the Court of Appeal in the present appeal is erroneous and ought to be reversed and that an order should be made for the entry of judgment in the Supreme Court in favour of the appellant on each of the two causes of action pleaded by the respondent, for the following among other 40

R E A S O N SRECORDA. As to the first issue (availability of declaration procedure to options)

- (1) BECAUSE the language of s.24 of the Land Settlement Promotion Act shows that the declaration procedure under that section is available only in the cases of contracts or agreements where there is a purchaser or lessee.
- 10 (2) BECAUSE with respect to the option contained in Clause (vv) of the memorandum of lease dated 24 May 1971 the respondent was neither a purchaser nor a lessee.
- (3) BECAUSE the words 'purchaser or lessee' appearing in s.24 are words of identification in relation to the transactions of purchase and leasing respectively and do not identify the declarant with respect to any other transaction to which Part II of the Land Settlement Promotion Act applies.
- 20 (4) BECAUSE there is no justification for interpreting the word 'purchaser' in s.24 as having been used in a proleptic sense, particularly having regard to the provisions of Part II of the Land Settlement Promotion Act generally.
- (5) BECAUSE there is no justification for resorting to a suggested meaning of the word 'purchaser' in a provision (not in issue in the litigation) in another Part of the Land Settlement Promotion Act (enacted in 1968) to determine the meaning of that word in Part II (enacted in 1952).
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B. As to the second issue (sufficiency of the statutory declaration)

- (6) BECAUSE the intention of Part II of the Land Settlement Promotion Act is that there should be compliance with that Act in respect of each transaction
- 40

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to which Part II applies, whether compliance is under paragraph (a) or under paragraph (b) of s.25(1) of the Act.

- (7) BECAUSE the intention of Part II of the Land Settlement Promotion Act is that the requirements of s.24 should be satisfied with respect to each transaction to which the declarant is a party. 10
- (8) BECAUSE both under the general law and for the purposes of Part II of the Land Settlement Promotion Act a lease and an option given to a lessee to purchase are two distinct transactions.
- (9) BECAUSE the statutory declaration in this case referred unequivocally to the transaction of leasing and made no mention whatsoever to the option to purchase, either directly or inferentially. 20
- (10) BECAUSE neither paragraph (i) nor paragraph (j) of s.5 of the Acts Interpretation Act 1924 has any bearing on the question of the sufficiency of the declaration in this case.
- (11) BECAUSE the provisions of regulation 2 of the Land Settlement Promotion and Land Acquisition Regulations 1968 as to compliance with the prescribed form of statutory declaration do not justify the complete omission from the statutory declaration in this case of any reference to the option to purchase. 30
- (12) BECAUSE with regard to this issue the judgment of Beattie J. in the Supreme Court was right.
- C. As to the third issue (relationship between the Land Settlement Promotion Act and the Illegal Contracts Act) 40
- (13) BECAUSE the words 'and shall have no effect' in s.25(4) of the Land

Settlement Promotion Act add to what has already been said in the subsection and were deliberately inserted for the very purpose of ensuring that, instead of having the normal effects of an unlawful transaction, the transaction should not have those effects or any effect at all.

- 10 (14) BECAUSE the words 'and shall have no effect' constitute express provisions of an enactment other than the Illegal Contracts Act dealing with relief and are inconsistent with the exercise of a power to give the transaction any effect at all.
- 20 (15) BECAUSE, although both s.6 of the Illegal Contracts Act and s.25(4) of the Land Settlement Promotion Act declare in express terms that illegal contracts are to have no effect, it is only the declaration in s.6 which is not to prevent the exercise of the relieving power under s.7, and the declaration in s.25(4) stands unimpaired and dominant by virtue of the words in s.7(1) ('subject to the express provisions of any other enactment').
- 30 (16) BECAUSE the inconsistency between s.7 of the Illegal Contracts Act and s.25(4) of the Land Settlement Promotion Act does not depend upon implication or inference.
- (17) BECAUSE the provisions of s.25(4) of the Land Settlement Promotion Act do not differ in principle from the legislative instances cited by the Court of Appeal as examples of enactments containing express provisions to which s.7 is subject.
- 40 (18) BECAUSE the words 'but subject to the express provisions of any other enactment' in s.7(1) are not to be regarded as in the nature of an exception clause but as an integral part of the relieving power created by

RECORD

the Act fixing its extent in relation to other enactments and recognising the continuing operation of s.25(4) of the Land Settlement Promotion Act.

- (19) BECAUSE it is not legitimate to have regard to the Report of the Contracts and Commercial Law Reform Committee on Illegal Contracts since there is no ambiguity in the Illegal Contracts Act.

G.P. BARTON.