Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Garnsey and another v. *Flood, from the Supreme Court of New South Wales; delivered* 23*rd June* 1898.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The Respondent brought a suit in the Supreme Court of New South Wales against the Appellants to recover possession of 640 acres of land situate in the Central Division, Land District of Coonamble, County of Gregory, Parish of Quambone in the Colony of New South Wales and 1,920 acres of land situate in the same land district. On the 2nd September 1886 one Edith Florence Flood made an application under the Crown Lands Acts of New South Wales for the 640 acres as a conditional purchase and an application for the 1,920 acres as a conditional lease in virtue of the conditional purchase of the 640. These applications were confirmed by the Local Land Board on the 18th July 1887. On the 21st September 1892 this conditional purchase and the conditional lease in virtue of it were by notice in the Government Gazette under Section 26 of the Crown Lands Act of 1884 (45 Vict. No. 18) declared to be forfeited. The effect of the forfeiture was by Section 136 of this Act that the lands became Crown land and might

be dealt with as such, but no forfeiture could take effect until the expiration of 30 clear days after the notification in the Gazette. By Section 3 of the Crown Lands Act Amendment Act of 1891 power was given to the Minister for Lands to reverse any forfeiture, whether provisionally or otherwise, subject to the provisions thereinafter contained. The provision in sub-section 2 of the section is as follows:—"A provisional "reversal hereafter to be made of a forfeiture "shall be deemed to have suspended or shall "suspend, as the case may be, the operation of "the forfeiture as from the date when such "forfeiture has been or shall be notified declared "or otherwise asserted or enforced; in any case "where such provisional reversal shall after-"wards be revoked such revocation shall have "the same effect as if the provisional reversal "so revoked had never been made."

On the 25th October 1892 the Minister for Lands approved of the provisional reversal of the before-mentioned forfeitures of the conditional purchase and the conditional lease, and on the 28th October it was notified in the Government Gazette. On the 19th May 1893 this provisional reversal was by notification in the Government Gazette revoked. In the meantime on the 27th October 1892 the Appellant Isabella Garnsey, then Isabella Cambridge, lodged applications for a conditional purchase of the 640 acres and for a conditional lease in virtue thereof of the 1,920 acres. On the 25th May 1893 the Respondent lodged similar applications. On the 20th June 1893 the Local Land Board confirmed the applications of Isabella Cambridge and on the 14th August it disallowed the applications of Ida Flora Flood on the ground that the areas applied for were not available the same having been confirmed to Isabella Cambridge on the previous 20th June. Under the Crown Lands

Act of 1884 (45 Vict., No. 18) there was an appeal from a decision of the Local Land Board to the Minister for Lands. By the Crown Lands Act of 1889 (53 Vict., No. 21) Section 8 a Land Court was constituted and substituted for the Minister, to which any decision or award of any Local Land Board may be appealed against, and by sub-section 3 the Land Court has power to hear and determine all appeals and the Crown may without having lodged a caveat or appeared before the Local Land Board appear as a party in all proceedings in which its rights interests or revenues may be concerned, and all parties may be heard by counsel attorney or agent. Sub-section 6 provides that whenever any question of law shall arise in a case before the Land Court it shall if required by any of the parties or may of its own motion state and submit a case for decision by the Supreme Court thereon which decision shall be conclusive.

Ida Flora Flood appealed to the Land Court against the order of the 14th August 1893 on the ground that the lands were Crown lands at the time of her applications but were not Crown lands at the date of the applications of Isabella Cambridge. It appears from Exhibit 3 of the Appellants' exhibits put in by them at the trial of the action that a notice of this appeal was served on Isabella Cambridge as a party interested on the 12th October 1893. She did not appear at the hearing but the Minister for Lands appeared and defended the case. On the 8th December 1893 the Land Court dismissed the appeal but Ida Flora Flood having required a case to be stated for the opinion of the Supreme Court a special case was stated the question for decision being "whether the pro-"visional reversal of the forfeiture (which "reversal was itself subsequently reversed) "prevented the lands from being Crown lands

"for the purposes of Isabella Cambridge's "application." The special case was heard before the Supreme Court on the 16th August 1894 and is reported in 15 New South Wales Reports (Law) 330. The Minister appeared by counsel and after the case had been fully argued by him and by counsel for Ida Flora Flood the Supreme Court held that when Isabella Cambridge applied for the land it was not Crown land and therefore was not open for selection under the Crown Lands Act of 1884 and that the question submitted to the Court must be answered in the affirmative. Thereupon on the 14th September 1894 the Land Court made an order directing the Land Board to confirm Ida Flora Flood's applications which was done by the Land Board on the 3rd December 1894. On the same day the Land Board reversed the order of the 20th June 1893 and disallowed the applications of Isabella Cambridge (who had then become the wife of the other Appellant). She appealed to the Land Court against this order. That Court held that it was technically defective as a direction from it was necessary to enable the Land Board to reverse their former order and on the 19th March 1895 the Court made an order directing the Land Board to re-hear the case and to disallow the application of Isabella Garnsey.

The action in which this appeal is brought was tried on the 3rd September 1895 when a verdict was found for the Plaintiff. On the 20th October 1895 a rule was obtained by the Appellants calling upon the Respondent to shew cause why the verdict should not be set aside and a new trial granted. On the 26th August 1896 this rule was ordered to be discharged with costs the Court refusing to allow the question which was decided on the special case to be re-opened and the present appeal is against that order.

Their Lordships are of opinion that the Respondent had proved a good title to the possession of the lands in dispute. It follows from the decision of the Supreme Court that when Isabella Cambridge applied for the land it was not Crown land, and was not open for selection and that the confirmation on the 30th June of that application by the Local Land Board could not have any effect. The Act of 1884 created a special court in the place of the Minister for Lands to hear appeals against adjudications or decisions of a Local Land Board and provided that upon questions of law submitted to it by the Land Court the decision of the Supreme Court should be conclusive. It would be wholly contrary to the design and purpose of the Crown Land Laws and the institution of the Land Court that the rival claimants of the land in this case should be allowed to raise the question which has been decided by the Supreme Court on the special case in an action in that Court and have its decision reviewed. The verdict was a proper one and there was no ground for a new trial. Their Lordships will therefore humbly advise Her Majesty to affirm the order of the Supreme Court discharging the rule and to dismiss this appeal the costs of which are to be paid by the Appellants.