

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
James Leslie Williams v. Edward O'Keefe
and others, from the High Court of
Australia; delivered the 10th December,
1909.*

Present :

THE LORD CHANCELLOR.

LORD MACNAGHTEN.

LORD COLLINS.

SIR ARTHUR WILSON.

[Delivered by The Lord Chancellor.]

It does not seem necessary to discuss on the present appeal either the facts of the case or the provisions of the various Acts to which Mr. Levett in his argument directed attention. For this is merely a question of demurrer both to declaration and plea. In the meantime, their Lordships are informed, the case has been tried, and any genuine points of law can be decided, if need be, on the facts as they are and not upon any imaginary picture of the facts which may commend itself to the pleader.

The Supreme Court of New South Wales did not determine the demurrers but determined a question not raised in the pleadings at all, namely whether or not the State in granting an occupation license gives thereby a warranty of quiet enjoyment. No doubt this was done with

a desire to help the parties to an end of their disputes, and proceeded upon an admission of fact made by the Plaintiffs' Counsel, namely, that he did not rely upon any express but only upon an implied warranty of title. Their Lordships have been asked to take the same course, but it is undesirable for this Board to express any opinion upon an abstract point of law without any knowledge of the actual facts or any jurisdiction to determine.

When the case came before the High Court of Australia a decision was given upon the demurrers themselves with which their Lordships entirely agree. In regard to the Declaration, it is impossible to say as a matter of law that the Crown could not bind itself by an agreement such as that declared upon. If any party makes a contract for a good consideration to do something which he was already bound to do, though no one was at the time sure that the duty already existed, the other party can sue upon the contract. Inasmuch as their Lordships were told by the Appellant's Counsel that this alleged contract had no existence in fact it would be a waste of time to discuss the subject further. The demurrer to the plea is valid, because in point of law the Land Appeal Court had no jurisdiction to determine the status of the land which is the matter of this litigation, and therefore the estoppel pleaded does not arise. There might be other reasons, but one will suffice.

In these circumstances their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.