

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Alfred Ernest Barton v. John Thompson
Lempriere and another, from the Supreme
Court of New South Wales; delivered the
18th March, 1910.*

Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[Delivered by Lord Macnaghten.]

By an agreement dated the 16th of January, 1908, Lempriere, the Respondent, agreed to sell, and Barton, the Appellant, agreed to buy several portions of land in New South Wales amounting in the aggregate to 1,042 acres, which at the time belonged to a Copper Mining Company in liquidation.

The agreed price was the sum of £10,000. On the execution of the agreement, the Purchaser in accordance with his contract paid down £2,500 as a forfeitable deposit. The balance was to be paid on the 30th of June, 1908. Time was to be the essence of the contract. The Purchaser failed to complete. The Chief Judge in Equity has declared the Vendor entitled to the deposit which has been brought into Court.

The Purchaser contested the Vendor's claim to forfeit the deposit, and now appeals on the ground that the Vendor himself was in default, alleging that he was and is unable to show a good title in accordance with the conditions of the contract.

The property was particularly described in the schedule to the agreement. It comprised seven Land Grants, five Mining Conditional Purchases, two Special Leases, and also one Conditional Purchase, and one Additional Conditional Purchase. For the present purpose there is no distinction between a Conditional Purchase and an Additional Conditional Purchase. In the schedule the one is denoted by the letters C.P. and the other by the letters A.C.P.

It is not disputed that a good title has been shown to all the portions of land comprised in the schedule except the two Conditional Purchases. They are described in the schedule as follows :—

Title.	Portion.	Area.	
C.P. No. 130	45	100A	} Gold reserved to the Crown.
A.C.P. No. 139	46	40	

The condition of the Contract as to title was that the property was to be sold "free from incumbrances, but subject to the reservations mentioned in the schedule . . . and to the local laws and regulations affecting the same."

Conditional Purchases take effect under the Crown Lands Alienation Act of 1861 (25 Vic. No. 1) sections 13 and 14. If the land conditionally purchased is not within the area of a Proclaimed Gold Field, it falls under section 13 : if it is, it falls under section 14. In both all minerals are reserved. The only difference is that land conditionally purchased under section 14 is not convertible into a Mining Conditional Purchase, while land conditionally purchased under section 13 may be so converted on terms

prescribed by subsequent Legislation and Regulations. In all dealings with Crown Lands gold is reserved to the Crown.

It is admitted that the two Conditional Purchases specified in the schedule were effected under section 14.

The only question is a question of construction. It is not suggested that there was any mistake or misrepresentation or that the Purchaser was in any way misled by the conditions of the Contract or otherwise. The Appellant's case is that on the true construction of the Contract the Vendor was bound to show title to the Conditional Purchases under section 13. The point mainly turned on the words "Gold reserved to the Crown." The learned Counsel for the Appellant admitted frankly that but for those words the Appellant would be out of Court. But he contended that those words amounted to a plain declaration that the two Conditional Purchases specified in the schedule were purchases under section 13, and so convertible on terms into Mining Conditional Purchases; otherwise, he said, the statement "Gold reserved to the Crown" would be idle and unmeaning. Their Lordships are unable to spell out of the words of the schedule, taken in connection with the language of the contract and the circumstance that the property had been used and would in all probability again be used for mining purposes, the meaning which the Appellant attributes to them.

The learned Chief Judge was of opinion that a good title had been shown in accordance with the contract and that the deposit of £2,500 was held in trust for the Vendor.

"No case," he says, "is set up of fraud or mistake; the case was argued purely on the true construction of the contract and in particular of the

words . . . 'subject to the reservations mentioned in the schedule hereto and to the local laws and regulations affecting the same'

* * * * *

"the Defendant contended, if I understood his argument rightly, that the words mean subject to the reservation of gold and to the provisions (not in the nature of reservations) of the local laws and regulations. I am unable to see why the later words of the clause should be so restricted. There is nothing to show that the two branches of the sentence are intended to be mutually exclusive. I think the fair meaning is subject to the reservation of gold and to the provisions (whether in the nature of reservations or not) of the local laws and regulations."

Their Lordships are of opinion that the decision of the learned Chief Judge is quite right, and they will humbly advise His Majesty that this Appeal ought to be dismissed.

The Appellant will pay the costs of the Appeal.

In the Privy Council.

ALFRED ERNEST BARTON

v.

**JOHN THOMPSON LEMPRIERE
AND ANOTHER.**

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