

APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

This was an appeal from the decision of the Supreme Court of New South Wales, on a case stated at the request of the present appellants under the provisions of the New South Wales "Stamp Duties Act 1898," secs. 18 and 54. The respondent assessed the value of the estate of the testator, Austin Mack, for purposes of stamp duty at £69,383, and the appellants claimed that from this sum £18,000 should have been deducted. The Supreme Court (Cullen, C.J., and Pring, J., Ferguson, J., dissenting) disallowed this claim of the appellants, and from that decision they appealed to the High Court. The Special Case stated after amendment was as follows:—

1. The abovenamed testator, Austin Mack, late of Pallal, near Bingara, died on the 4th June, 1918, leaving a will dated the 29th March, 1912, and a codicil thereto dated the 4th January, 1915.

2. Probate of his said will and codicil was granted by this Court on the 14th August, 1918, to Austin Joseph Gardner Mack, William Rodney Mack, and Frank Alexander Mack, the executors named therein.

3-4. Within twelve months before the execution of the indentures hereinafter mentioned, discussions took place between the testator and some members of his family, in the course of which the testator on several occasions stated that he desired and intended to divide £18,000 amongst his six daughters in equal shares by way of gift. When expressing his said intention, the testator informed his daughters that he intended to carry it out by deed of gift, and that he expected them to leave the money in his station, and that he would pay them interest on it in the meantime, but that he also wished them to understand that they were at liberty to withdraw the money at any time they wished.

5. Six several indentures were accordingly executed on the 17th day of March, 1910, the parties to each of them being the testator of the one part and one of his said daughters of the other part, and the testator thereby, in consideration of natural love and affection and for no other consideration, covenanted and agreed for himself, his heirs, executors and administrators and assigns, with such daughter, her executors, administrators and assigns, that he, his executors or administrators, would on demand pay to her, her executors, administrators or assigns, the principal sum of £3000, and further, that he would in the meantime, and until such demand should have been made and complied with, pay to her, her executors, administrators or assigns, interest on the said sum, or on so much of it as should for the time being remain unpaid, at the rate of four pounds per centum per annum, by equal half-yearly payments on the first days of March and September in every year, or on the date of the payment of the said principal sum as the case might be.

6. Immediately after the said indentures were executed they were handed to Messrs. Whiting and Aitken, solicitors, of Melbourne, to hold on behalf of the said respective daughters of the testator, and thereafter the said indentures were held by the said solicitors on behalf of the said daughters until after the death of the said testator, when the said solicitors, by direction of the said respective daughters, sent the respective indentures to them in New South Wales.

7. No part of the said principal sum was paid by the testator to any of his said daughters, but from the date of the execution of the said indentures the testator made payment from time to time to each of them representing interest on such principal sum.

8. Up to the death of the testator no demand had been made by any of his daughters for the payment of the said principal sums, or any part thereof, and at his death the same, or any part thereof, had not been paid by him to any of them or to any person on behalf of any of them.

9. The said executors claim that they are entitled to deduct the said six sums of three thousand pounds as debts due by the estate of the testator, but the Commissioner disallowed such claim on the ground that such sums were not debts actually due and owing within sec. 53, sub-sec. (1), of the "Stamp Duties Act 1898."

10. The Commissioner further claims that the said six sums of £3000 form part of the estate of the testator in respect of which duty is payable under sec. 49, sub-sec. (2), paragraph (B), of the said Act, as amended by the "Stamp Duties (Amendment) Act 1914," sec. 36.

11. On the basis that the said six sums of £3000 cannot be deducted as aforesaid, but form part of the estate of the testator, the value of his estate for purposes of duty is £60,383.

12. The Commissioner assessed the duty payable in respect of the said estate at £5837 0s. 6d., being at the rate of nine and two-thirds pounds per centum on the said sum of £60,383, and also claimed interest on such duty amounting to £207 1s. 11d.

13. The executors paid the said sum of £5837 0s. 6d., and such interest, but under protest as to the disallowance of the deduction of the said six sums of £3000, and called upon the Commissioner to state and sign this case.

14. The questions for the determination of this Court are—

- (a) Are the executors entitled to deduct the said six sums of £3000 as debts of the testator within sec. 53, sub-sec. (1), of the said Act?
- (b) Do the said sums form part of the estate of the testator in respect of which duty is payable under sec. 49, sub-sec. (2), paragraph (B), of the said Act?

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(c) What is the duty payable on the said estate?

(d) How the costs of this case should be borne and paid?

The Act provides as follows:—Section 53 (1).—“Where any person dying after the twenty-second day of May one thousand eight hundred and ninety-four was at the time of his death domiciled in New South Wales all debts actually due and owing by him shall be deducted from his estate.”

Section 53 (4)—“... Where a mortgagor dies ... no interest on the mortgage shall be deducted from his estate except that due and payable at the time of his death.”

Section 49 (1)—“The duties to be levied collected and paid as aforesaid upon the estates of deceased persons shall be according to the duties mentioned in the Third Schedule to this Act and such duties shall be charged and chargeable upon and in respect of all estate whether real or personal which belonged to any testator or intestate dying after the commencement of this Act.”

Section 49 (2)—“Duties to be levied collected and paid according to the duties mentioned in the Third Schedule shall also be charged and chargeable upon (and in respect of ... (B) all personal estate (not being chattels real) taken under any gift whenever made by such person of which *bona fide* possession and enjoyment has not been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him of whatsoever kind and in any way whatsoever.”

Maughan, K.C., Watt, K.C., and Leonard for the appellants.

Langer Owen, K.C., and Thompson for the respondent.

The following cases were referred to during argument:—*Re China Steamship and Labuan Coal Co. Limited*, 38 L.J. Ch. 512; *Hay v. Commissioner of Stamps*, 11 S.R. (N.S.W.) 304; *Master-in-Equity v. Pearson*, (1897) A.C. 214; *Re Robertson*, 18 N.S.W. L.R. 239; *Merchant Service Guild v. Newcastle and Hunter River Steamship Co. (No. 1)*, 19 A.L.R. 422, at pp. 433, 434; *Webb v. Stenton*, 11 Q.B.D. at p. 527; *In re Brown's Estate, Brown v. Brown*, (1893) 2 Ch. 300; *Ex parte Kemp*, L.R. 9 Ch. 383.

Cur. adv. vult.

KNOX, C.J., read the following judgment:—The respondent having assessed the value of the estate of the testator for purposes of stamp duty at £60,383, and having disallowed a claim by the appellants to a deduction of £18,000, at the request of the appellants stated a case for the Supreme Court under secs. 18 and 54 of the “Stamp Duties Act 1898,” as amended by later acts. On the hearing before the Supreme Court it was agreed that the case was to be treated as if pars. 3 and 4 had been struck out and the following paragraph inserted in lieu thereof:—“Within twelve months before the execution of the indentures

“hereinafter mentioned discussions took place between the testator and some members of his family, in the course of which the testator on several occasions stated that he desired and intended to divide £18,000 amongst his six daughters in equal shares by way of gift. When expressing his said intention the testator informed his daughters that he intended to carry it out by deed of gift, and that he expected them to leave the money in his station, and that he would pay them interest on it in the meantime, but that he wished them also to understand that they were at liberty to withdraw the money at any time they wished.” It was also agreed that par. 5 was to be treated as having been amended by substituting for the words “All the said indentures were executed” the words “six several indentures were accordingly executed.” We treat the case as if it had been amended accordingly.

By each of the indentures above mentioned the testator covenanted to pay to one of his daughters on demand the sum of £3000, with interest thereon half-yearly, until payment at the rate of £4 per cent. Upon execution of these indentures they were handed to a firm of solicitors to hold on behalf of the respective daughters. No part of the principal sum covenanted to be paid under any of the indentures was paid by the testator in his life-time, nor was any demand for payment made by any of the daughters. The testator paid interest as agreed.

The executors having claimed to deduct from the assessed value of the estate of the testator the sum of £18,000 owing under these indentures, the respondent disallowed their claim, contending that, even if that sum represented debts due and owing within the meaning of sec. 53, which he denied, the transaction constituted a disposition of personal estate of the testator which came within the provisions of sec. 49 (2) (B) of the Act, and was liable to duty accordingly. The Supreme Court by majority, Cullen, C.J., and Pring, J. (Ferguson, J., dissenting), decided that the respondent was right in assessing the value of the estate for duty at £60,383, and it is against that decision that this appeal is brought.

All the learned Judges held that the debts created by the indentures were debts actually due and owing by the testator within the meaning of sec. 53, and in this conclusion I agree. It is sufficient to say that there is nothing in the section to require that the phrase “debts actually due and owing” should be read as meaning “debts actually due and payable,” and on the contrary, in sub-sec. (4) of sec. 53 the expression “due and payable” is used, showing that the Legislature or the draftsman appreciated the difference between the two expressions. Moreover, the construction contended for by the respondent would preclude the deduction of all trade or other debts payable at a date after the death of a testator, and it is impossible to suppose that the Legislature meant to do this.

From this decision it necessarily follows that the executors are entitled to deduct the sum of £18,000 from whatever is found to be the value of the assets comprised in the "estate" of the testator.

By virtue of sec. 49 the estate assessable to duty includes not only the real and personal property belonging to the testator at the date of his death which is dealt with by sub-sec. (1), but also certain other real and personal estate specified in sub-sec. (2) which did not belong to him at that time. But it is important to observe that with the exception of property over which the deceased person had a power of appointment all the property brought into the estate by sub-sec. (2) is property which at some time belonged to the deceased person but has ceased to belong to him at the date of his death by reason of some disposition made by him. The general object of these provisions plainly is to render liable to taxation on the death of a person property which but for some disposition made by him during his life-time would have passed from him on his death. In the present case it is clear that the assets of the testator at the date of his death were unaffected by the execution of the indentures in question. The property real and personal which he had before executing the indentures was not in any way disposed of or affected by their execution. No property which had belonged to him passed to any other person by means of the indentures, nor did they create any charge on any specific property. There was no gift of anything tangible, or of anything at all except an obligation enforceable against the testator. What the testator did was to create a liability, not to dispose of assets. The answer to the contention of the respondent may be found in the fact that while sec. 53 deals wholly with the "liabilities" side of the account, sec. 49 deals wholly with the "assets" side. The provisions of these sections are wholly independent, and the fact that a given obligation is within the scope of the deductions authorised by sec. 53 is irrelevant in considering whether a given transaction does or does not come within the provisions of sec. 49. The two sides of the account must be complied independently of each other.

So far as the facts stated in the case show the testator never disposed of any property or assets in his life-time, and it is with such dispositions that sec. 49 (2) is intended to deal. At the death of the testator the real and personal property belonging to him was of the value of £60,383, and so far as can be gathered from the facts stated in the case every item of real or personal property which belonged to him before the execution of the indentures in question belonged to him at the date of his death. Consequently the "assets" side of the account cannot possibly be increased beyond £60,383, and as it is clear that under sec. 53 items amounting to £18,000 must be entered on the "liabilities" side the inevitable result is that the value of the estate assessable for

stamp duty is £60,383, minus £18,000, that is, £42,383. The parties have agreed that on this footing the amount to be refunded to the appellants by the respondent is £2386 17s. 11d.

I should add that we were not asked to draw any inferences from the facts stated in the case, nor do I think we have any power to do so.

The order will be that the appeal be allowed, that the questions be answered as follows:—(1) Yes. (2) No. (3) £3057 4s. 6d. (4) The costs of the proceedings in the Supreme Court and of this appeal be paid by the respondent. And that the respondent do pay to the appellants the sum of £2386 17s. 11d., with costs of the proceedings in the Supreme Court and of this appeal.

ISAACS, J., read the following judgment:—The judgment appealed from was given upon a "case stated" under the provisions of sec. 18 of the "Stamp Duties Act 1898" of New South Wales, as incorporated into sec. 54 of the Act. It cannot be too clearly understood that on a "case stated" the facts stated are to be taken as the ultimate facts for whatever purpose the case is stated. The Court is not at liberty to draw inferences unless that power is by express words, or by necessary implication, specially conferred by some enactment. The law is examined with considerable detail in the *Merchant Service Guild Case* (No. 1), 19 A.L.R. 422, at pp. 433, 434. To the authorities there cited I add three—*Tancred v. Christy*, 12 M. & W. 316; the *New Zealand Company Case*, 24 T.L.R. at p. 172; and *Usher's Brewery v. Bruce*, (1915) A.C., at pp. 472-473. No power is contained in sec. 18 of the "Stamp Duties Act" to draw inferences, and the Court's only jurisdiction is to decide "the question submitted" on the basis of what the Commissioner states the facts to be. If, therefore, the matter depended on a conclusion of fact, necessary to be arrived at, either in addition, or contrary to the facts stated as in the case, there would be no jurisdiction in the Court to determine the facts or to give any judgment other than to send the case back for definite statement by the Commissioner as to the conclusion he arrived at.

In the present case, however, notwithstanding the insertion of some evidentiary facts, these may be entirely disregarded, because learned Counsel for the Commissioner finally did not contend for any position that is not established by the terms of the documents themselves, regarded as real and operative instruments. So regarding them, the first question arises under sec. 53 of the Act, and it is whether the obligations the testator entered into by the deeds of 17th March, 1910, to his daughters were "debts actually due and owing by him" within the meaning of the first sub-section of that section.

Ultimately the contention of the Commissioner that they were not such "debts" rested on the circumstance that by the terms of the deeds, the moneys

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were covenanted to be paid "on demand." It was said that as no "demand" had been made in the testator's life-time, there was no "debt" at his death. It is perfectly clear that, if that be a sound argument, a great number of ordinary business obligations and ordinary covenants upon valuable consideration to pay moneys "on demand" would be outside the ambit of sec. 53. There is no doubt the obligation is to pay a sum certain, not contingently, but absolutely. It is a liability for that sum not dependent in any way upon the non-performance of some other obligation, but presently existing, and fixed, and independent of any other stipulation. But a "demand" is stipulated for, not in order to create a pecuniary obligation, or even to make it certain in amount, but simply to fix the time of performance so that no litigation for breach is possible until the demand is made. The debt existed. It was, at the date of the testator's death, a debt "actually due and owing," that is truly and really due and owing; for "due" here only means "debitum," and "owing" only means that which is "owed." "Due" is sometimes used in the sense of "payable," that, however, is where the context requires it. But, as Mellish, L.J., said, with reference to the phrase "debts due," in *Ex parte Kemp*, L.R. 9 Ch. 383, at p. 387—"Primâ facie, "and if there be nothing in the context to give them "a different construction, they would include all sums "certain which any person is legally liable to pay, "whether such sums had become actually payable or "not." Story, J., in *United States v. Bank of North Carolina*, 2 Peters, at p. 37, says—with reference to the word "due" being synonymous with "owing"—"In the settlement of the estates of deceased persons, no distinction is ever taken between debts "which are payable before or after their decease; "the assets are equally bound for the payment of all "debts." Here the context helps the *primâ facie* meaning, because it would be curious to read "due "and owing" as "payable and owing."

The debt in this case was not "payable" at the date of the testator's death, because the time for "payment," which is the mode of discharge of an existing debt, had not arrived, and no action could have been maintained—see *Amcer-oon-Nissoi*, 6 Moo. Ind. App. at p. 229. That is, however, immaterial; the existence of the debt is what is essential to sec. 53, and this case, on the admitted facts, falls within sub-sec. (1) of the section. The use of the word "payable," in addition to "due" in sec. 40 of the amending Act of 1914 is confirmatory of this view.

The only other question is whether the amounts of these debts, though deductible under sec. 53, still fall within sub-sec. (2) (B) of sec. 49, so as to be taxable as "personal estate taken under a gift, &c." A careful examination of sec. 49 will demonstrate the impossibility of such a result. Section 49 establishes a field of taxation by way of "Duties on Estates of "Deceased Persons." But that field is marked out

into two distinct portions, the dividing line being unmistakable. Sub-section (1) embraces "all estate "whether real or personal" which "belonged" to the deceased. That is every particle of property he had at his death, and it means the gross amount of that property.

Sub-section (2) establishes an entirely separate class, consisting of various elements, which, though distinguishable from each other, possess one common characteristic, namely, they did not belong to the deceased at the time of his death. It follows that the class of property embraced in sub-sec. (1) and that embraced in sub-sec. (2) as a whole are mutually exclusive. Now, sec. 53 provides that the "debts "actually due and owing by him" shall be deducted from "his estate." That is, his debts shall be deducted from his estate. After gathering and valuing up in gross the whole of the property belonging to him at the time of his death, you deduct part of that gross value, namely, the amount of his debts, so as to get the net amount of his own property. "Deduction" means taking away part of the thing from which the deduction is made. Since the debts are treated as part of the first class, and since the two classes are mutually exclusive, it necessarily follows that the debts are not part of the second class, and consequently do not fall within the expression "personal estate" as used in sub-sec. (2) (B) of sec. 49. It is easy to see how unjustly and irrationally the contrary view would operate. A debt that falls within the third sub-section of sec. 53—as for instance, a gift such as the present, if the testator had died within three months after the deed was executed—would not only not have been deductible under sec. 53, but would have actually been added to swell the taxable estate under sec. 49 (2) (B), making his estate notionally £18,000 more than he ever had or could have had, and simply because he created an obligation against himself. That is absurd, but it is also contrary to the obvious meaning of the section.

The appeal should be allowed.

RICH, J.—I agree. I preface my judgment by stating that we are not entitled to draw inferences of fact, as the Statute under which the Special Case is stated does not give the Court any power to do so. It was contended on behalf of the Commissioner that the sum covenanted to be paid by the testator was not a debt "actually due and owing" because no demand had been made for it. A debt is a sum of money which is now payable or will become payable in the future by reason of a present obligation, *debitum in praesenti, solvendum in futuro*—*Webb v. Stenton*, 11 Q.B.D. at p. 527. The intensive force of actually is "according to the fact"—*Appely v. Horseley Co.*, (1899) 2 Q.B. at p. 526. The sums of money covenanted to be paid became, upon the execution of the deeds, debts due and owing, but not en-

forceable by action until the demand stipulated for by the covenantor was made. It is noticeable that the words "due and owing" in sec. 53 are contrasted with the words "due and payable" in sec. 40 of the amending Act 1914 (No. 3). The claim of the executors, therefore, to deduct the sums due under the covenants in question is, in my opinion, rightly made.

I now turn to the construction of secs. 49 (2) (B) and 53. The whole of sec. 49 (2) is an artificial enlargement of a deceased's estate. The sub-section brings within the area of taxation property which did not belong to the deceased, but that leaves open the question whether what is deducted under sec. 53 is to be added under sec. 49 (2) (B). It would be inconsistent for the Legislature to say in one section that the same property should be taxed as it says in another section is to be free from taxation. The true construction of the two provisions mentioned is that they relate to different things. Section 49 (2) (B) is confined to the artificial enlargement, and sec. 53 to the estate actually belonging to the testator. The debts in question are not taxable under sec. 49 (2) (B).

Appeal allowed. Questions answered as follows: — (1) Yes. (2) No. (3) £3657 4s. 6d. (4) Costs of proceedings in Supreme Court and of this appeal to be paid by respondent. Respondent to pay to appellants the sum of £2386 17s. 11d., with costs of proceedings in Supreme Court and in this Court.

[Solicitors—For the appellants, T. D. Ryan, Bin-gara, by Makinson and d'Apice; for the respondent, J. V. Tillett, Crown Solicitor for New South Wales.]

H. V. E.

FULL COURT — (Knox, C.J., Isaac and Rich, JJ.)) Nov. 9, 1920.
(Sydney.)

PEARSON, Defendant Appellant v. SWANNELL, Plaintiff Respondent.

War Precautions—Decision of State Supreme Court—Regulation not applicable to lease—Determination in matter arising under regulations—Finality of determination—No appeal to High Court—War Precautions (Moratorium) Regulations, 8C and 10.

Regulation 8C of the War Precautions (Moratorium) Regulations provides that "any determination . . . made or given by any Court in any matter arising under these Regulations shall be final and conclusive, and without appeal."

By a judgment in the Supreme Court of New South Wales it was decided, either that Regulation 10 of the War Precautions (Moratorium) Regulations did not apply to a certain lease, or that if it did apply, leave should be

given to the plaintiff to proceed, notwithstanding the Regulations.—

Held, that the decision of the Supreme Court in either event was a determination in "a matter arising under" the Regulations within the meaning of Regulation 8C, and therefore no appeal lay to the High Court.

Worrall v. Commercial Banking Co. of Sydney Ltd., 24 A.L.R. 47, followed.

Fletcher v. Skrimshire, 26 A.L.R. 58, overruled.

Decision of the Supreme Court of New South Wales (Owen, J.) affirmed.

APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

This was an appeal from the Supreme Court of New South Wales (Owen, A.-J.). It appeared that the respondent, Swannell, leased to the appellant, Pearson, certain premises for a term of one year, and covenanted in the lease that the appellant could at any time up to and inclusive of a certain date, purchase the premises and the goodwill of Swannell's business as veterinary surgeon carried on there, for a certain sum. If the option was exercised, Swannell covenanted that he would not carry on the business of veterinary surgeon within a certain radius of Parramatta for a specified time. Pearson, who also carried on a similar business, covenanted that, in the event of his not exercising the option, he would not carry on such business within the same radius of Parramatta for a certain time.

The respondent instituted a suit in the Supreme Court of New South Wales against the appellant, claiming that Pearson had not exercised the said option within the agreed time, nor within a further time for which the abovementioned lease and option had been extended, and therefore claimed an injunction restraining the appellant from carrying on business as veterinary surgeon during the specified time and within the agreed radius. The defence set up by the appellant was that he had in fact exercised the option of purchase within the extended period of the lease and option. Owen, A.-J., who heard the suit, found that the option had not been exercised within the stipulated time. But the appellant was given leave to amend his defence by setting up the contention that under Regulation 10 of the War Precautions (Moratorium) Regulations the lease should be treated as though the respondent were the mortgagee and the appellant the mortgagor of the premises, the rent being regarded as interest and the amount of the purchase price as principal secured, and that therefore the appellant should either be treated as though he had exercised the option or the terms of the lease should be extended so as to enable the option to be exercised. On this point the learned Judge held that the lease had expired, and the option had not been exercised. He also held that Regulation 10 did not apply. He therefore gave judgment for the plaintiff for an injunction, and an inquiry as to damages.

Power for the appellant.

ROCHE AND MURDOCH'S CONTRACT.

S. A. Thompson for the respondent.

The following cases were referred to:—*Worrall v. Commercial Banking Co.*, 24 A.L.R. 47; *Fletcher v. Skrimshire*, 26 A.L.R. 58; *Southee v. Finnis*, (1917) N.Z. L.R. 341; *Morris v. Baron*, (1918) A.C. 1.

KNOX, C.J., after stating his reasons for agreeing with the finding of Owen, A.-J., that the option had not in fact been exercised, proceeded:—Then we come to the War Precautions (Moratorium) Regulations. At the trial Mr. Power obtained leave to amend the defence by setting up reg. 10 as extending to the defendant a further opportunity of exercising his option, and as affording a reason why the relief claimed by the plaintiff should not be granted. I do not think it is necessary in the present case to express a considered opinion whether a lease such as that in question here—that is, a lease of land containing an option to purchase the land and the goodwill of a business—comes within reg. 10. It is quite clear that the learned Judge decided one of two things, either that this was not a case to which the Moratorium Regulations applied, or, if it was, that he would give the plaintiff leave to go on and sue upon the agreement. Whichever way he decided, it was a determination on the very issue raised by the amendment of the defence setting up reg. 10. That being so, it is clear that under reg. 8C no appeal lies from the decision of the learned Judge. That is in line with the decision of this Court in *Worrall v. Commercial Banking Co. of Sydney Ltd.*, and that case was not cited to the Victorian Supreme Court in *Fletcher v. Skrimshire*.

I think, therefore, that as far as the appeal turns on the question of the exercise of the option, the decision appealed from was right, and that as far as it turns on the question of the Moratorium Regulations we have no right to entertain the appeal.

ISAACS, J., and RICH, J., concurred.

Appeal dismissed, with costs.

[Solicitors—For the appellant, S. P. Kemp, by Petrie and Son; for the respondent, H. E. McIntosh.]
H. V. E.

1921 V.L.R. 296
Supreme Court.

Before Cussen, J.

April 1, 22.

In re ROCHE AND MURDOCH'S CONTRACT.

Conveyancing — Sale of land — Contract — Land of specified measurements — Together with buildings erected thereon—Side walls of building erected on adjoining land — Title — Compensation — Contemporaneous sale of adjoining allotments—Easement—As against vendor—As between purchasers—Requisition for title or compensation—Vendor's right to rescind—"Transfer of Land Act 1915" (No. 2740), Table A, Condition 4.

A contract for the sale of a block of land described the land sold as "All that piece of land delineated and coloured red on a map in the margin hereof being part of Crown Allotment 9 . . . Together with the buildings erected thereon known as numbers 185-189 Queen Street, Melbourne." The map showed an allotment with a frontage to Queen Street of 34 feet 3 inches, and 35 feet wide at the back.

The block in question had been bought at auction on an occasion when the adjoining land on both sides had been sold to other purchasers by the same vendor. One of the adjoining lots was sold before, and one after, the block in question. The purchaser discovered later that the building known as 185-189 Queen Street had no independent side walls, but that its roof was supported by beams extending across the width of the building, and let into the walls of the adjoining buildings, and that such walls stood outside the boundaries of the area in the map.

The purchaser having delivered a requisition that title to the land on which the walls stood must be produced or compensation made,—

Held, that the vendor was under no obligation to give title to the land on which the walls stood, and the purchaser was not entitled to compensation or damages.

If the vendor had retained the adjoining land, the purchaser would have been entitled to an easement of support for the walls.

Semble—An easement of support would arise as between the various purchasers.

Semble—The requisition was a requisition "on the title or otherwise" within the provisions of Condition 4 of Table A of the "Transfer of Land Act 1915," which would entitle the vendor to annul the sale.

VENDOR AND PURCHASER SUMMONS.

By a contract in writing, dated February 16th, 1921, Joseph Francis Roche sold to John Dick Murdoch certain land for the sum of £5137 10s. Under the heading of particulars in the contract, the property sold was described thus—"All that piece of land delineated and coloured red on the map in the margin hereof being part of Crown Allotment 9, Section 19, City of Melbourne, Parish of North Melbourne, County of Bourke. Together with a right of carriage way over the road coloured brown on the said map. Together with the buildings erected thereon known as Numbers 185-189, Queen Street, Melbourne." On the map the area coloured red was shown as having a frontage of 34 feet 3 inches to Queen Street, and a width at the back of 35 feet. The conditions in Table A of the "Transfer of Land Act 1915" were incorporated subject to certain modifications, of which the only material one was that the fifth condition of Table A should be read as if, after the word "but," the words "if such mistake or error be discovered within 10 days from the day of sale but not otherwise," had been inserted.

On February 26th, 1921, the purchaser's solicitor wrote to the vendor's solicitor, stating that a misdescription, mistake or error appeared in the particulars, in that the side walls of the buildings known as Numbers 185-189, Queen Street, were built wholly upon the adjacent properties, and not on the area