

*Privy Council Appeal No. 148 of 1915.*

**Charles Edward Bull and Others** - - - *Appellants,*

*v.*

**The Attorney-General for the State of New  
South Wales** - - - - *Respondent.*

FROM

**THE HIGH COURT OF AUSTRALIA.**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 14TH JULY, 1916.

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*Present at the Hearing :*

THE LORD CHANCELLOR.

EARL LOREBURN.

LORD SHAW.

SIR ARTHUR CHANNELL.

*Delivered by* EARL LOREBURN.

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The controversy in this case arises from the fact that reversionary leases were granted to the appellants. If that was lawful, then this appeal must succeed. If it was unlawful, then the only point left is whether the leases so granted can be treated as voidable under section 44 of the Act of 1895, or are wholly void. This Act and the prior Acts to which it refers must be construed in accordance with the ordinary canons of construction. It may be that it would be a hardship to the lessee to declare his lease void, or that it would be against the public interest to condone the grant of reversionary leases without the safeguard of competition. But these things are to be considered by the Government and Legislature of New South Wales. This Board has simply to construe the Acts which have been passed in that State and to advise the Crown as to their true meaning and effect.

The first question is whether or not the reversionary leases were lawfully granted. That depends upon section 26 of the Act of 1895. Does that section enable the Crown to grant a renewal of a lease of these lands granted under the Act of 1895? If yes, it must be because of the sixth provision of that section. The language is very difficult. Either this provision is out of place in this section, because it is inconsequential to provide that a lease granted under the Act of 1895 is to be subject to provision that leases granted under prior Acts may be extended. Or the Board must say that, though renewal under this sixth

provision is expressly confined to leases granted under an earlier Act, yet it applies also to leases granted under the 1895 Act, and must say so in face of the first provision, which requires that no reversionary lease can be granted under the 1895 Act. That would really be making, not declaring, law. The words appearing in the early part of section 26, viz., "the granting of the leases shall be subject to the provisions hereunder contained," do not, in their Lordships' opinion, authorise the addition of fresh language to any of the provisions. And if any of them has no application as it stands, it cannot be altered so as to make it apply. Therefore these reversionary leases were not lawful leases, and cannot be sustained under the sixth provision of section 26.

The second question is whether or not section 44 requires that these reversionary leases shall be treated as voidable instead of being treated as void. This also is a difficult matter, as appears from the difference of opinion it has already evoked.

It appears clear that section 44 may apply to these leases by virtue of the last portion of it. "Purchases or leases purporting to be made or granted after the commencement of this Act" include all such purchases or leases. But the Board have still to enquire whether these leases come within the class of those which are declared to be not void, but only voidable.

The section says that a lease "shall not be held to be void by reason of any breach or non-observance of the provisions of the said Acts." The Act of 1895 is on the same level with the said Acts by virtue of the last portion of section 44. If these leases are (apart from section 44) void, as their Lordships think they are, do they become so by virtue of any breach or non-observance of the provisions of the Act of 1895? They are void (apart from the relief now being considered) because they were reversionary leases. One of the provisions of the Act of 1895 (section 26, proviso 1) forbids reversionary leases. Therefore these leases were void because of the breach or non-observance of that provision. It is to be observed that both section 26 and section 44 use the word "provision," in the former case to restrict the power of leasing, in the latter case to excuse what has been wrongly done. The latter section seems to have the former in view. Accordingly, section 44 applies to this case, and these leases are voidable, and are not to be held void, though they would have been so but for section 44. As these leases, therefore, are made voidable by the 44th section, the procedure enacted by that section for determining whether they shall be avoided or affirmed should be followed, and the information of the Attorney-General asking for a declaration that the leases are void fails.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, and the information of the Attorney-General of New South Wales dismissed with costs throughout. The respondent will pay the costs of this appeal.

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In the Privy Council.

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CHARLES EDWARD BULL AND  
OTHERS

v.

THE ATTORNEY-GENERAL FOR THE  
STATE OF NEW SOUTH WALES.

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DELIVERED BY EARL LOREBURN.