Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Robertson and others v. *Day, from the Supreme Court of New South Wales; delivered* 13*th November* 1879.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.
SIR HENRY S. KEATING.

THE Appeal under consideration arises in this way: The Plaintiffs are the lessees of a run of pastoral land in the Colony of New South Wales, and they bring an action of trespass against the Defendant for unlawfully entering a portion of the land within the limits of their lease. Their case is that they, in pursuance of powers given by the local Legislature, had duly acquired the rights of persons to whom the Government had contracted to sell a certain area of 640 acres of land within their run, and that the Defendant wrongfully entered it. The Defendant contends that although the Plaintiff had, as is admitted, given the proper notice and taken all the requisite steps to obtain pre-emption of the land in question, that land had ceased to be subject to the right of pre-emption; and that he, the Defendant, had obtained it as a free selector under the provisions of the local Acts. It is admitted that if he had the right to do this he has taken the requisite steps to complete his title.

On the trial a verdict was taken by consent for the Plaintiff, subject to a special case on

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which the question raised for the decision of the Court was whether the land applied for by the Plaintiffs could be purchased by them. After the argument of the special case, the Supreme Court directed the verdict entered for the Plaintiff to be set aside, and a verdict to be entered for the Defendant. The Court was divided, the Chief Justice being in favour of the Plaintiff, and the two Puisne Judges on the part of the Defendant. From this decision the present Appeal is brought.

The question arises entirely upon the construction of one section of one of the Colonial Acts.

Before considering this, it may be well to state shortly the course of the precedent legislation in the colony in this matter.

In the year 1861 the Crown Lands Alienation Act was passed, which established a code of laws in supercession of those which had been in force under Orders in Council. It may be enough to say that the scope of the legislation was to enable the Crown to grant leases of waste lands, afterwards called Crown lands, and that the greater part of the lands of the colony were so leased that it was nevertheless allowable to any person whatever to select upon these leased lands any portion not exceeding 320 acres for conditional purchase, and to purchase it if he complied with the conditions. On the other hand, with a view to the protection of the Crown lessees, powers were given to them of pre-emption in respect of a limited part of the lands under lease. The 7th section of the Act empowers the lessee "to exercise a pre-emptive right "of purchase over one portion and no more of "an area not exceeding 640 acres out of each "block of 25 square miles, and at a value to "be determined by appraisement." The relation of 640 acres to 25 square miles appears there to be recognised by the Legislature. A further power is given to the Crown lessee to

purchase by way of pre-emption any lands on which he has effected improvements, each purchase being limited to 320 acres; there being apparently no limit to the number of such purchases. Another Act, called the Crown Lands Occupation Act, passed at the same time, contained various provisions with respect to the granting of Crown leases; and it may not be immaterial to observe that the ordinary extent of lease is there stated to be an area of 25 square miles, although there is a power under certain circumstances for the Government to extend that area to an area not exceeding 100 square miles; and that although it is provided that these areas should be, as far as convenient, of a rectangular shape, nevertheless this provision is subject to many exceptions arising from the configuration of the ground and other considerations.

In the year 1875 an Act was passed, amending the former Acts, and undoubtedly the object of this Act appears, among other things, to have been to give additional encouragement and protection to the Crown lessees. The quantity of land which they are enabled to purchase in respect of improvements thereon is increased, and then comes the 31st section upon which the whole question turns. In order to understand this section it must be borne in mind that as the law then stood it was in the power of a free selector, as he was called, to select lands upon which improvements had been partially made, though not completed, greatly to the detriment of the Crown lessee. The object of this section appears to have been to give protection against any such free selection to the Crown lessee for at least 12 months, by enabling him to purchase land upon which he intended to make, but had not actually made, improvements upon his making a certain deposit

and complying with certain conditions. The words of the section are these :—" If any person " holding any Crown lands under a lease or " promise of lease for pastoral purposes shall " deliver to the land agent of the district an " application in writing for liberty by reason " and in virtue of improvements intended to be " made thereon to purchase any area of such " land not exceeding 640 acres nor less than 40 " acres, describing as may be required by any " regulations hereunder the boundaries of the " same which shall be subject to the several " provisions of the 'Crown Lands Alienation Act " of 1861,' and of this Act, and setting forth " the intended improvements, and shall also at the " same time pay to the said land agent a sum of " money equal to one pound per acre on the " area so applied for, such land shall for the " period of one year from the date of such appli- " cation be held to be land lawfully contracted " to be granted in fee simple, and as such not " open for conditional sale by selection, or by " auction; and upon completion, to the satisfaction " of the minister, of improvements to the value " of one pound per acre on the land so applied " for, a grant in fee simple of such land shall " issue to the person so applying, or his legal " alienee or representative at the appraised value. " Provided that if the said improvements shall " not be so made, 25 per cent. of the deposit " shall be forfeited and the balance refunded, " and the said land shall be and become Crown " land within the meaning of the 'Crown Lands " Alienation Act, 1861.'" Here follows the proviso upon the construction of which the whole case depends: " Provided also, that no such " application to purchase as aforesaid shall be " made for more than one square mile within " each block of five miles square out of each " lease or a proportionate quantity out of any " holding of less area."

It is contended on behalf of the Defendant that the Plaintiff had a right to pre-emption of 640 acres, or one square mile, only if it formed part of a block which was a geometrical square containing an area of 25 square miles. On the part of the Plaintiff it is contended that he was able to purchase the square mile if it formed part of a block which though not a precise square, contained an area of 25 square miles. It is admitted that there was not in the Plaintiff's run any block of land in which a geometrical figure could be drawn five miles square, the whole consisting of Crown lands, no portion of which had been purchased; it is admitted, on the other hand, that a figure comprising more than 25 square miles, consisting wholly of Crown lands, might be drawn if the figure need not be a geometrical square.

In considering this question, it is in the first place desirable to look at the previous legislation, the surrounding circumstances, and what may be called the reason of the thing. It has been shown that 25 square miles was the ordinary size of a Crown lease, although that size might be extended. It has not been contended, and probably could not be, that the area comprised in any of these leases forms a precisely square geometrical figure, although no doubt it was considered desirable that it should be rectangular as far as circumstances permitted. If therefore the construction of the Defendant be adopted, it follows that in runs of the ordinary size no power existed on the part of the Crown lessee to avail himself of this section, and the section would be in a great measure rendered nugatory. But further it has been pointed out that even with respect to runs of a larger size it would be easy for free selectors by making selections here and there in the run to prevent any square figure being drawn

in it, consisting wholly of 25 square miles of Crown lands. Their Lordships, therefore, cannot shut their eyes to the consideration that the construction on the part of the Defendant would render practically inoperative a clause doubtless intended for the benefit and protection of Crown lessees. It is further to be observed that in the previous legislation of 1861, which may be treated as *in pari materia*, the Legislature has given a power to the Crown lessee to purchase an area—the same area as here described as 640 acres—out of a block defined as 25 square miles, the extent of area of the block, and not the precise configuration of it, being there considered the important matter.

From these considerations it appears more probable that the Legislature intended that which the Plaintiffs maintain to be the true construction of the statute; at the same time, this construction ought not to be adopted if the words of the Act are clear and unambiguous, and exclude such a construction. Upon a careful consideration of the words, their Lordships are of opinion that such a construction is not excluded. It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them. It appears to their Lordships that the concluding words of the proviso—"or a proportionate quantity out of any holding of a less area"—point to the conclusion that the Legislature had in their contemplation rather the question of area than the question of geometrical symmetry, and that when they used the expression "within each block of five miles square," they really intended to convey the same meaning which they had expressed in the clause *in pari materia* in the Act of 1861, though using a different form of expression. It is doing no violence to language to read

the words as if slightly elliptical, and as if they were "within each block of an area of five miles square," or "within each block equivalent to an area of five miles square." To adopt this interpretation—which amounts to no more than supposing that the Legislature used the language in question in its popular rather than in its strictly mathematical sense, and as expressive of area rather than of geometrical symmetry—is to reconcile the two portions of the proviso otherwise in conflict, to give effect to the whole clause, to make it consistent with previous legislation and with what may reasonably be supposed to have been the intention of the Legislature.

For these reasons their Lordships have come to the conclusion that the Chief Justice was right, and they will humbly advise Her Majesty that the judgment of the Court below be reversed, and that the verdict for the Plaintiff in this action stand. The Appellant should have the costs of this Appeal.