

Privy Council Appeal No. 106 of 1927.

Ma Sin and others - - - - - *Appellants*

v.

The Collector of Rangoon - - - - - *Respondent*

Maung Ba Kyaw - - - - - *Appellant*

v.

The Collector of Rangoon - - - - - *Respondent*

(Consolidated Appeals)

FROM

THE HIGH COURT OF JUDICATURE AT RANGOON.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 12TH FEBRUARY, 1929.

Present at the Hearing :

VISCOUNT DUNEDIN.

LORD CARSON.

SIR CHARLES SARGANT.

[Delivered by VISCOUNT DUNEDIN.]

This is an appeal from the High Court of Judicature at Rangoon, in a case in which they have altered the finding of the Judge of the High Court of the Original Side in a land acquisition case.

The Government on the 31st May, 1922, had published a declaration under section 6 of the Land Acquisition Act, 1894, that the appellants' land was required for a public purpose, and that declaration included, besides the land which they desired to take from the appellants, certain land belonging to other people. The Government seemingly changed their mind about requiring the land of the other people, and accordingly on the 6th October,

1923, they published another declaration under section 6, specifying the same land belonging to them, but, at the same time, announcing that the former declaration was cancelled.

The matter went before the Collector and he gave a certain award, to which their Lordships need make no further allusion. An appeal was taken to a Judge of the High Court and that Judge made an award by which he awarded Rps. 6,500 per acre in respect of one plot and Rps. 3,800 per acre in respect of another plot. Appeal and cross-appeal were taken to the Appellate Court, and the Appellate Court altered that judgment, replacing the figure of Rps. 6,500 per acre by a figure of Rps. 5,600 per acre, and replacing the figure of Rps. 3,800 per acre by a figure of Rps. 2,750 per acre.

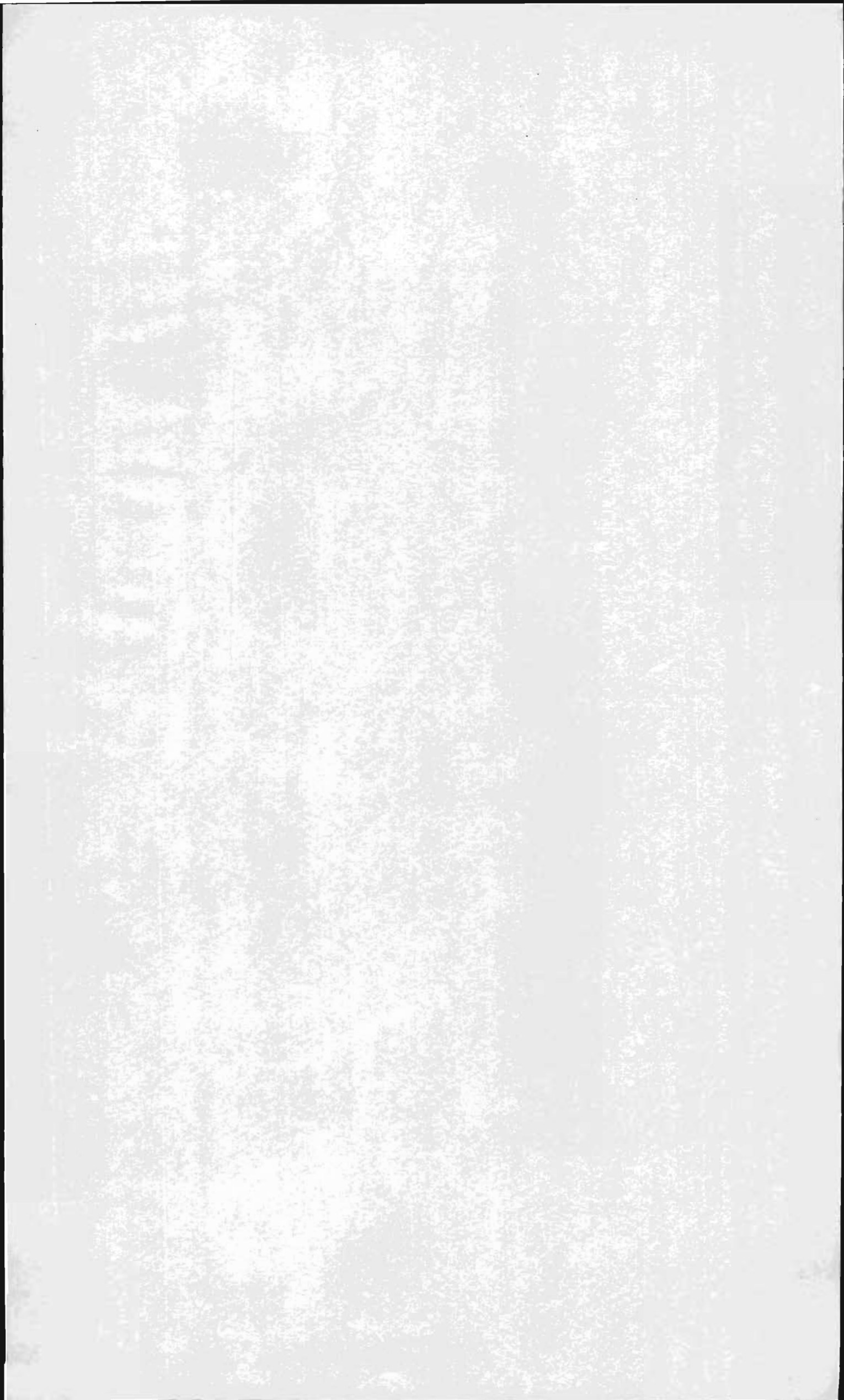
The Appellate Court, in considering the sales upon which they based their judgment, after mentioning the two notifications, which their Lordships have already referred to, then said :—

“ Though the word ‘ cancelled ’ was used to mean that the first notification was either superseded or modified, the first notification practically remained good so far as these two plots of Maung Ba Kyaw and Ma Sin are concerned. So in our opinion the market value at the date of the publication of the first notification should be the market value to be considered.”

“ Their Lordships are unable to take that view, because it is absolutely in the teeth of Clause 1, subsection 1, of section 23 of the Land Acquisition Act, 1894, which says that, in determining the amount of compensation to be awarded, the Court shall take into consideration ‘ the market value of land at the date of the publication of the declaration relating thereto under section 6.’ ”

Now, it is perfectly certain that the only notification which gave right to take this land was the second notification, and therefore that date must be the date taken. That really vitiates the judgment of the Appellate Court. It is apparent from the figures that all this land was galloping upwards in value, and in particular, that sales were proved, after the date of the first notification, but before the date of the second, which showed a highly increased value, and that it was in considering those sales, as well as the former sales, that the learned Judge of first instance came to the result that he did. Their Lordships are therefore clearly of opinion that the judgment of the Appellate Court cannot stand and that, as there seems nothing to be said against the judgment of the Judge of first instance, that must be reverted to.

Their Lordships will humbly advise His Majesty accordingly to allow the appeal, to set aside the decree of the High Court in its Appellate Jurisdiction with costs, and to restore the judgment of the first Judge. The appellants will have the costs of this appeal.



In the Privy Council.

MA SIN AND OTHERS

v.

THE COLLECTOR OF RANGOON.

MAUNG BA KYAW

v.

THE COLLECTOR OF RANGOON.

(*Consolidated Appeals.*)

DELIVERED BY VISCOUNT DUNEDIN.

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