

TEDEP & ORS.

Appellants.

-v-

THE CUSTODIAN FOR EXPROPRIATED PROPERTY

Respondent.

(RE VARZIN LANDS).

W. C. J.

7/5/63.

This Appeal which is still standing in the list for further hearing was mentioned to me yesterday and Counsel for the Appellants intimated that after thorough investigation of the evidence available to his clients he desired to intimate to the Court:-

(1) That the Appellants are not able to establish that the statutory conditions to bringing the land under the operation of the Lan's Registration Ordinance were not satisfied. On the contrary, every indication is that these conditions were complied with.

(2) The Appellants have not evidence which would establish fraud either against Wollf or the Custodian.

These two matters were referred to in paragraphs (2) and (3) of the summary set out at the conclusion of my Reasons for Judgment delivered on the 12th November last year. Counsel for the Appellants submitted to the judgment of the Court as to the questions covered by his intimations.

The effect of the foregoing is, in my opinion, that the appellants must now accept the conclusion that the land was properly and validly brought under the operation of the Lands Registration Ordinance and that under that Ordinance the Curator acquired an indefeasible registered title. The land having been brought effectively under the operation of the statutory system of registration it ceased to be native land and ceased to be subject to native custom so far as questions of title are concerned.

This does not dispose of the Appeal for, as indicated in the body of the Judgment delivered last November, it is still open to the Appellants to show that the true effect of registration was not to destroy their rights but merely to declare that the registered statutory title would prevail and not be subject to any other interest. If this is the true position, it is open to the Appellants to contend that when the Statutory Register was destroyed the statutory title ceased to exist and there was no provision extending the supremacy of the Custodian's title. If at this point the original native ownership of the land was able to reassert itself and become attached to the land once more, the Appellants may contend that the true effect of the Land Titles Restoration Ordinance was either to prohibit the restoration of a title if any native land interests were found to stand in the way, or alternatively that in the event of a conflict between a former registered interest and a subsisting native interest, a decision must be made as to which ought to prevail over the other or what other solution to the problem might be found to arise from the statutory provisions. These questions are canvassed so far as it was practicable to do so without having heard

evidence in the judgment of last November. I make no findings as to any of these matters at the moment. The Commissioner made no determination in the proceedings before him, but it may be necessary for these questions to be determined on the present Appeal.

I regret that the summary at the end of my previous judgment has caused some uncertainty. I found it practicable to summarise my conclusions only up to the stage of dealing with the Custodian's pre-war title. It covers one branch of the case which the Appellants might have sought to establish but was not intended to exclude other possible contentions discussed but not determined elsewhere in the judgment.

As the matter stands at the present time, it would appear that the statutory title as restored is conclusive but directions have already been given so that if as a result of this Appeal it should appear that the existing Certificate should be set aside, the Appellants are to have an opportunity to bring whatever proceedings might be appropriate for this purpose. It may be that the interests of a subsequent purchaser for value who has now got a registered title will prove paramount but this question is not before me owing to the peculiar nature of the issues which arise for determination under the Ordinance and also because the requisite parties are probably not before the Court on this Appeal. My inquiry is limited to the state of the title as at a date in 1952 which is fixed by the Ordinance as the appropriate date. In the present Appeal I am concerned to determine what interests were subsisting at that date and what Final Order, if any, should have been pronounced in the proceedings the subject of this Appeal.