

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Attorney-General for the Province of Manitoba v. The Attorney-General for the Dominion of Canada, from the Supreme Court of Canada; delivered the 5th August 1904.

Present at the Hearing :

LORD MACNAGHTEN.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

SIR ARTHUR WILSON.

[Delivered by Lord Robertson.]

The question raised by this Appeal is whether certain swamp lands were vested in the Province of Manitoba on the passing of a Canadian Statute in 1885, or whether they only came to be vested in that Province on certain later dates when the swamp lands were in fact transferred. There are no disputed facts; the proceedings consequent on the Statute are simple; and the controversy is on the construction of the Statute.

The Canadian Act 48 & 49 Vict. cap. 50 is intituled "An Act for the Final Settlement of the Claims made by the Province of Manitoba on the Dominion."

Section (1) provides that: "All Crown lands in Manitoba which may be shown to the satisfaction of the Dominion Government to be swamp lands shall be transferred to the Province, and enure wholly to its benefit and uses."

Section (2) provides for an allotment of land which shall be selected by the Dominion Government, and granted as an endowment to the University of Manitoba.

Section (3) provides that: "The sum now payable annually to the Province under the Act 45 Vict. cap. 5 as an indemnity for the want of public lands shall be increased from \$45,000 to \$100,000, such increase to date from the 1st day of July 1885."

Section (7) provides that: "The grants of land and payments authorized by the foregoing sections shall be made on the conditions that they be accepted by the Province (such acceptance being testified by an Act of the Legislature of Manitoba) as a full settlement of all claims made by the said Province for the reimbursement of costs incurred in the Government of the disputed territory, or the reference of the boundary question to the Judicial Committee of the Privy Council, and all other questions and claims discussed between the Dominion and the Provincial Governments up to the 10th day of January 1885."

In 1886, on the revision of the Statutes, the above-recited Section 1 of the Dominion Act of 1885 was re-enacted in a slightly altered form as Section 4 of the Revised Statutes of Canada, Cap. 47. Sections 3 and 4 of Cap. 47 of such Revised Statutes are as follows:—

"(3) All ungranted or waste lands in the Province shall be vested in Her Majesty, and administered by the Governor in Council for the purposes of Canada, subject to and except in so far as the same are affected by the conditions and stipulations contained in the agreement for the surrender of Rupert's Land by the Hudson's Bay Company to Her Majesty."

"(4) All Crown lands in Manitoba which are shown to the satisfaction of the Dominion

“ Government to be swamp lands, shall be transferred to the Province, and enure wholly to its benefit and uses.”

The acceptance by Manitoba, required by the 7th Section, was expressed in 1886, by the Act 49 Vict., cap. 38 (Manitoba), in the following terms: “ The Legislature of the Province of Manitoba accepts the grants and payments as authorized and construed by the above-recited Acts as a full settlement of all claims by the said Province upon the Dominion as therein set forth up to the 10th day of January 1885.”

The procedure taken for carrying out the Dominion Statute of 1885 was that, by a Canadian Order in Council, surveyors were appointed to select the lands to be granted, to report from time to time to the Minister of the Interior, and to submit lists of the lands, so to be granted, for the approval of the Governor in Council upon reports by the Minister.

The ultimate result of the procedure thus directed was that a revised and corrected list of lands was approved; and, by Order in Council dated 16th April 1888, his Excellency ordered that the lands mentioned in the annexed list, “ amounting in all to an area of 52,600 acres be and the same are hereby vested in Her Majesty for the purposes of the Province of Manitoba.” The list occupies three pages of the printed Record, and contains several hundred items.

Their Lordships observe that the very general terms of the Statute making the grant rendered necessary a detailed survey, such as was actually made, to pick out of a very extensive territory those lands which might fairly be held to come within the description of swamp lands. The present claim of the Appellant, when put in operative form, is that the Province is entitled, from the date of the Statute, to the profits of

each parcel of land which has eventually, and after a process of selection, been transferred.

The question is whether this is the meaning of the Section, and their Lordships do not think that it is. The subject-matter of the enactment is not a vindication of property, and is not a change of property, but of administration. The enactment itself is expressed as relating to the future. There is first, according to the scheme of the Section, to be a showing to the satisfaction of the Government; and, after this has taken place, the lands "shall be" transferred. On their being transferred, they "shall . . . enure wholly to its benefit and uses," *i.e.* the benefit and uses of Manitoba. They do not enure to the benefit and uses of Manitoba until they are transferred.

Their Lordships cannot find in the words of the Section any suggestion that Manitoba is to enjoy any benefit from the lands which arises before the transference; and the conception of the Section is quite against it. The fruits or produce now in dispute having come into being before the transference, would be a benefit *plus* what is described in the Section. Those fruits arose while the administration of the lands was with Canada, and have been duly applied to Canadian uses.

The question comes before their Lordships on appeal against a judgment of the Supreme Court of Canada, given on the 16th of February 1904, affirming the judgment of the Exchequer Court of Canada, and dismissing the Appeal therefrom of the Plaintiff, the present Appellant. Their Lordships will humbly advise His Majesty that the Appeal ought to be dismissed. There will be no Order as to costs.
