
GEORGE BENSON HALL, *et al*..... APPELLANTS ;

1883

AND

*Feb'y. 28.

THE DOMINION OF CANADA LAND
AND COLONIZATION COMPANY, } RESPONDENTS.
(LIMITED).....

*June 18.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR
LOWER CANADA (APPEAL SIDE).

*Injunction—41 Vic. ch. 14 (P.Q.)—Sale by Commissioner of Crown
Lands of lands subject to current timber licenses, Effect of—
Licensee's rights.*

Under the provisions of the *Quebec Act*, 41 *Vic.*, ch. 14, the *D. of C.
L. Co.*, in November, 1881, alleging themselves to be proprietors
and in possession of a number of lots in the township of *Whit-*

*PRESENT—Sir W. J. Ritchie, Knt., C.J.; and Strong, Fournier,
Henry, Taschereau and Gwynne, JJ.

1883

HALL

v.

CANADA
LAND AND
COLONIZA-
TION CO.

ton, *P.Q.*, obtained an *ex parte* injunction, restraining *G. B. H. et al.* from further prosecuting lumbering operations which they had begun on these lots. *G. B. H. et al.* were cutting in virtue of a license from the government, dated 3rd May, 1881, which was a renewal of a former license. By a report of the Executive Council of the Province of *Quebec*, dated 1st April, 1881, and approved of by the Lieutenant Governor in Council on the 7th of the same month, the Commissioner of Crown Lands was authorized to sell to the company the lands in question, and the company deposited \$12,000 to the credit of the department to be applied on account of the intended purchase. On the 9th of May the company gave out a contract for the clearing of a portion of the land, and on the 19th July, 1881, the Commissioner executed a deed of sale in favor of the company, subject, amongst other conditions, "to the current licenses to cut timber on the lots." Upon the writ being returned, the injunction was suspended. *G. B. H. et al.* answered the petition and the Superior Court dissolved the injunction. On appeal to the Court of Queen's Bench, this judgment was reversed and the injunction applied for made perpetual. On appeal to the Supreme Court of *Canada* it was

Held,—(*Henry and Gwynne*, JJ., dissenting,) that the *D. of C. L. & C. Co.* had not acquired any valid title to the lands in question prior to the 19th July, 1881, and that by the instrument of that date their rights were subordinated to all current licenses, and *G. B. H. et al.* having established their right to possess said lands for the purpose of carrying on their lumber operations under a license from the Crown, dated 3rd May, 1881, the injunction granted *ex parte* to the *D. of C. L. & C. Co.* in November, 1881, under the provisions of 41 *Vic.*, ch. 14, (*P.Q.*), had been properly dissolved by the Superior Court.

APPEAL from a judgment of the Court of Queen's Bench for *Lower Canada* (appeal side), reversing the judgment of the Superior Court and maintaining a writ of injunction issued in the cause and declaring the same perpetual.

The proceedings in the court of original jurisdiction were commenced by the respondents, who, alleging themselves to be proprietors and in possession of a large number of lots of land in the township of *Whitton*, district of *St. Francis*, obtained an *ex parte* injunction from

Mr. Justice *Doherty*, at *Sherbrooke*, restraining the present appellants from further prosecuting lumbering operations which they had begun on some of these lots, and ordering them forthwith to remove from the land in question, which comprised about 20,590 acres, their employees and contractors. Upon the writ being returned, the injunction was suspended; the defendants answered the petition by three pleas.

1883
HALL
v.
CANADA
LAND AND
COLONIZA-
TION CO.
—

The first plea was a special denegation of the allegations of the petition or declaration.

The second plea alleged in substance that plaintiffs' title dated only on 19th July, 1881, and was therefore subject to the timber license expiring 30th April, 1882; that plaintiffs had been guilty of suppression of material facts in their petition, whereby they got an *ex parte* injunction; that defendants had the possession of a year contemplated by the injunction act; that plaintiffs had not placed settlers on the lands according to the conditions of sale, but were violating their contract with the Government.

By a third answer, the defendants pleaded that on the 7th April, 1881, the date of the order-in-council, they had a continuing right of possession in said lands for 20 years from the year 1872, and their rights could not be interfered with or affected by any other sales or locations than those made to *bond fide* settlers.

That the order-in-council of 7th April, and all proceedings thereunder, were and are *ultra vires*, null and void, in so far as the same could affect the defendants and their rights.

The following are the material facts of the case as appeared from the oral and documentary evidence given at the trial.

During the period of nearly ten years the respondents and their *auteurs* had continuously, during the lumbering business of each year, carried on business as lum-

1883
 ~~~~~  
 HALL  
 v.  
 CANADA  
 LAND AND  
 COLONIZA-  
 TION CO.

bermen on timber limits, in the said township of *Whitton*, complying with the Government regulations to which said limits were subject, and with the conditions of the licenses annually renewed and issued to them as grantees and owners of timber limits.

While respondents were thus in possession of said timber limits in December, 1879, and before the respondent company had corporate existence, Mr. *Stockwell*, now one of the company, and its manager, applied to the commissioner of Crown lands, on behalf of certain English capitalists, for a grant or purchase of 300,000 acres of unsettled lands in the townships.

This application was the beginning of a voluminous correspondence between *Stockwell* and the commissioner and resulted in an offer to sell 100,000 acres to a company to be organized as suggested by the commissioner in the correspondence.

The respondent company was incorporated in *England*, and proof of the fact furnished by *Stockwell*, and \$12,000 deposited by him to pay the first instalment of the purchase money, so soon as the sale should be made to the company.

Of his negotiations and correspondence with *Stockwell*, apropos of the land in question, the commissioner drew up a journal report, embodying said correspondence, and submitted the same to a committee of the executive council, who, having considered the matter, presented it to the Lieutenant-Governor for his approval; and on the 7th of April, 1881, the report was approved by his honor—thus constituting by this correspondence, so approved, what the parties to this cause agreed to call “an order in council.”

This order in council contained, *inter alia*, the following provisions:—

“The sale, if carried out, will be made upon the following conditions:

" 3rd. The sale shall be subject, with regard to each  
 " lot or farm settled upon, to all the conditions and  
 " restrictions of an ordinary sale, as set forth in the  
 " blank form of receipt for first instalment attached  
 " hereto (as follows) :

" No. 115, Crown Lands Agency.

" \$

187

[L.S.]

" Received from                      the sum of  
 " being the first instalment of one-fifth of the purchase  
 " money of                      acres of land contained in  
 " lot, No.                      in the                      range of the township of  
 "                      P.Q., the remainder payable in four equal  
 " annual instalments, with interest from this date.

" This sale, if not disallowed by the Commissioner of  
 " Crown Lands, is made subject to the following con-  
 " ditions, viz. : The purchaser to take possession of the  
 " land within six months from the date hereof, and  
 " from that time continue to reside on and occupy the  
 " same, either by himself or through others, for at least  
 " two years, and within four years at farthest from this  
 " date clear, and have under crop, a quantity thereof in  
 " proportion of at least ten acres for every one hundred  
 " acres, and erect thereon a habitable house of the  
 " dimensions of at least sixteen by twenty feet. No  
 " timber to be cut before the issuing of the patent,  
 " except under license, or for clearing of the land, fuel,  
 " buildings and fences. All timber cut contrary to  
 " these conditions will be dealt with as timber cut  
 " without permission on public lands. No transfer of  
 " the purchaser's right will be recognised in cases  
 " where there is default in complying with any of the  
 " conditions of sale. In no case will the patent issue  
 " before the expiration of two years of occupation of  
 " the land, or the fulfilment of the whole of the condi-  
 " tions, even though the land be paid for in full. Subject

1883  
 HALL  
 v.  
 CANADA  
 LAND AND  
 COLONIZA-  
 TION CO.

1883  
 ~~~~~  
 HALL
 v.
 CANADA
 LAND AND
 COLONIZA-
 TION CO.
 —

“also to current licenses to cut timber on the land, and
 “the purchaser to pay for any real improvements now
 “existing thereon, belonging to any other party.”

And concluded as follows: “After due consideration
 “of the facts above detailed, the undersigned has the
 “honor to recommend, that he be now authorized to
 “carry out the terms and intentions of his letter of
 “30th December, 1879, addressed to the aforesaid *Frs.*
 “*W. Stockwell*, with the modifications allowed by sub-
 “sequent letter of the 13th April, 1880, above embodied,
 “and to sell to the Dominion of *Canada Land and Colo-*
 “*nization Company* the lands in question, in accordance
 “with the terms and conditions of the above mentioned
 “letters.

“The whole respectfully submitted.

“*E. J. Flynn*,

“Commissioner of Crown Lands.”

On the 3rd of May, 1881, the appellants having in all respects complied with the conditions of their license, paid into the department the ground rent due for its renewal for the season of 1881-82, and after some delay received their license from the agent. This license was delivered to them on the 11th July, 1882. It is dated the 3rd May, the day on which the ground rent was paid.

When the order in council was passed there had been sold by the crown land local agents some of the lots included in the list of lands to be sold to plaintiffs, of which fact the department at the time was unaware; and on the 4th day of May, 1881, the Department, acting by Mr. *W. E. Collins*, the clerk in charge of the sales department, wrote to Mr. *Stockwell* as follows:

“*F. W. Stockwell*, Esq.,

“Township of *Gayhurst*, Lot 33, in 3rd Range, 100 acres.

“This completes the list of lands sold and approved
 “of by department previous to 7th April last, date of the

"order in council, reserving certain lands in favor of
 "the Dominion of *Canada Land and Colonization Com-*
 "pany.

"Yours respectfully,
 "W. E. Collins.

1883
 HALL.
 v.
 CANADA
 LAND AND
 COLONIZA-
 TION CO.
 —

"Dept. of Crown Lands, Quebec, 4th May, 1881."

To this letter was annexed a list of lots "forming
 "part of reserve of Dominion Land and Colonization
 "Company, disposed of previous to date of order in
 "council authorizing such reserve, 7th April, 1881."

On the following day the assistant commissioner, Mr.
E. E. Taché, wrote the agent in the *Saint Francis*
 agency and sent him a list of the lands sold to plaintiffs.

The letter is as follows :

"SIR,—You are hereby notified that all the lands
 "enumerated in the accompanying list have been
 "reserved in favor of the Dominion of *Canada Land and*
 "Colonization Co., by order in council of 7th ult. : you
 "will be therefore guided accordingly. With regard to
 "sales made by you of any of said lands since the date
 "of the above order in council, including those entered
 "in your April return, they of course are disallowed.
 "You should inform the respective purchasers of such
 "lots that they will have to deal with above company
 "as regards the purchase thereof, &c."

On the 9th of May the respondents concluded a con-
 tract for the clearing of the land and building of the
 houses, with the knowledge of the Crown lands depart-
 ment.

On the 10th May the assistant commissioner, under
 the directions of the commissioner, telegraphed the
Saint Francis agent not to renew the timber license on
 the lands sold.

A copy of this order in council was shortly afterwards
 given to Mr. *Stockwell* by the commissioner of Crown
 lands, who told him at the same time, "that it was all

1883

HALL

v.

CANADA
LAND AND
COLONIZA-
TION CO.

right, to go ahead ; " and in accordance with this permission, on the 9th of May the company gave out a contract for the clearing of a portion of the land.

On the 19th of July, 1881, the commissioner of Crown Lands, in accordance with the approval which he had asked and obtained, made and endorsed upon the order in council the following ruling, produced as defendants' exhibit No. 11.

"This is to certify that I the undersigned, commissioner of Crown lands, have sold, as by these presents, I do sell, in virtue of the authority in me vested by the preceding order in council, and the law, to the said Dominion of *Canada Land and Colonization Company*, the lots of land mentioned in the list hereunto annexed and authenticated by my signature, with the exception of the lots Nos. 10 and 11 in 5th range N. E. *Whilton*, and lot No. 17 in 7th range, and No. 8 in 9th range of same township ; also of lot No. 44 in 6th range, *Spalding* ; lots 42, 43, 47 and 48 in 5th range, lots No. 13, 14 and 42 in 6th range, and No. 31 in 3rd range of *Ditchfield*, all which lots had been sold at the date of the said order in council, to wit : on the 7th April last, and were not then disposable. The said sale is thus made for the price or consideration, and subject to all the terms, clauses and conditions mentioned and set forth in the said order in council, and specially to the conditions indicated in the blank form of receipt or location ticket annexed to the said order in council, to which no special derogation has been made, and amongst other conditions, to the current licenses to cut timber on the lots and to the payment by the said company of all real improvements which may have been made by third parties on said lands.

"I acknowledge having received from the said company the sum of twelve thousand dollars on account of, or as one instalment on the purchase money or price

of sale, as it is alleged in the said report or order in council.

"In witness whereof my hand and seal at *Quebec* this 19th day of July, 1881.

"(Signed) *E. J. Flynn,*

"Commissioner of Crown Lands, *P.Q.*"

On the following day he wrote Mr *Stockwell* officially, as manager of the company, enclosing him the order in council of the 7th April, and informing him that he had confirmed the sale to the company, with some modifications.

The Superior Court held that the petitioners were not proprietors through a valid title of the lands in question and in lawful possession thereof so as to entitle them to the remedy by injunction. The Court of Queen's Bench, on appeal, held that petitioners had proved that they were proprietors in possession.

Mr. *Irvine*, Q.C., for appellants.

Mr. *Kerr*, Q.C., and Mr. *Brown* for respondents.

The arguments, statutes, and regulations, and cases relied on, are fully noticed in the judgments.

RITCHIE, C. J.:—

I think the judgment of the Superior Court dissolving the injunction should not have been disturbed; that the petitioners are not the proprietors through a valid title to the lands in question, and are not in such lawful possession thereof as to entitle them to the relief they seek by injunction. *Hall's* licenses were recognized as valid and subsisting by the government in dealing with the *D. L. Co.*, and such dealings were expressly subject to such licenses, whereby "the right to take and keep exclusive possession of the lands in question, subject to such regulations and restrictions as may be established by order in council," is conferred on the licensees by the

1883
HALL
v.
CANADA
LAND AND
COLONIZA-
TION Co.
—

1883
HALL
v.
CANADA

Con. Stats. Can., ch. 23, sec. 2, and which can only be affected at the instance and in favour of the actual and *bonâ fide* settlers on their respective farms, in whose favour alone the reservations in the licenses are made.

STRONG, J. :

The respondents, who were petitioners in the court of first instance, sought an injunction to restrain the appellants from cutting timber on certain lands of the Crown, to which the petitioners claimed an actual title as purchasers under a conditional agreement or promise of sale entered into by the Crown, through the agency of the commissioner of Crown lands for the Province of *Quebec*, dated the 19th July, 1881.

This agreement was made under authority of an order in council, approved by the Lieutenant Governor of the Province of *Quebec* on the 7th of April, 1881. The respondents claim the right to carry their title back to the date of this order in council, but as it merely authorized the commissioner to carry out the terms of the proposals mentioned in it and approved by it, it is manifest that the order in council by itself conferred no title, and that the petitioners acquired none anterior to the 19th July, 1881, when, by an instrument under seal, endorsed upon the order in council, which is called "the commissioner's ruling," and which was, in substance, an agreement on behalf of the Crown to sell the lands to the petitioners, or, rather, to the locatees whom the petitioners should select, on the terms proposed, they for the first time acquired what I have called an inchoate title to the lands in question.

The appellants, however, assert a paramount title to cut timber on their lands under a license from the Crown, dated the 3rd May, 1881, and therefore prior in date to the title of the respondents, which did not accrue until the 19th of July following. This priority in point of

time of the appellants' license would alone have been sufficient, in my judgment, to disentitle the respondents to the injunction which they asked for, but when it appears, as it does, both from the order in council and the agreement or "commissioner's ruling" of the 19th of July, that the rights of the respondents were expressly subordinated to all current licenses to cut timber, and that the location tickets which they were to issue to the actual settlers to whom they might make sales upon the lands in question, were also to be expressly subject to such current licenses, it is difficult to see how any serious doubt or question can possibly be raised as to the appellants' rights under the license of the 3rd May, 1881.

1883
 HALL
 v.
 CANADA
 LAND AND
 COLONIZA-
 TION Co.
 Strong, J.

The order in council, as already stated, was a mere authority to the commissioner to make the sale if he should so think fit, and no rights were acquired by the respondents by force of it until the agreement of the 19th July was signed by the commissioner. Until the latter date nothing whatever had been done to interfere with the right of the Crown to sell the lands to other parties, if it should be thought fit, or to grant or renew licenses to cut timber; consequently the words "current licenses," in the instrument of the 19th of July, 1881, must mean licenses then current, and cannot be restricted to licenses which were current on the 7th April, 1881, the date of the order in council. The license which had been issued or renewed to the appellants on the 3rd May previously was, therefore, according to the most strict and rigorous construction which can be given to the words, a valid and current license within the meaning of the exception. Then it is apparent that the rights of the petitioners, being thus made subject to those of the holders of timber licenses, the petitioners are not within the exception contained in the license in favor of actual settlers. They are not

1883
HALL
v.
CANADA
LAND AND
COLONIZA-
TION CO.
—
Strong, J.
—

actual settlers, as it is contemplated by the agreement that there shall be no actual settlement, except by the persons to whom the petitioners may re-sell; and the exception contained in the agreement by the Crown with the petitioners, and which is also required to be inserted in the location tickets, rendered this provision in the licenses inoperative against the appellants. Another sufficient reason for refusing an injunction is that the petitioners do not bring themselves within the *Quebec* statute, 41 *Vic.*, ch. 14, sec. 1, sub-sec. 2, inasmuch as the Dominion Land Company are neither proprietors under a valid title, nor were they ever in possession of the lands in question.

I may add that, in my opinion, the learned judge of the Superior Court at *Sherbrooke* was also entirely right in dissolving the injunction on another ground, that of insufficient disclosure of the facts on the applications for the *ex parte* injunction.

My judgment is therefore that this appeal should be allowed, and that the judgment of the Court of Queen's Bench be reversed, and the order of the Superior Court be restored with costs to the appellants in both courts.

FOURNIER, J.:

For the reasons given by Mr. Justice *Tessier* in the Court of Queen's Bench, and by Mr. Justice *Doherty* in the Superior Court, I am in favor of allowing this appeal.

HENRY, J.:

The question before us in this case is whether the judgment of Mr. Justice *Doherty*, quashing and annulling the injunction previously granted by him on the petition of the respondents' company, should be sustained or reversed.

On an appeal to the Court of Queen's Bench that judgment was reversed ; and, from the judgment of the latter, an appeal was taken to this court. The case was fully and ably argued before us, and now awaits our decision.

1883
HALL
v.
CANADA
LAND AND
COLONIZA-
TION Co.

Henry, J.

The interests involved are large, and I have given my best consideration to the law applicable to the peculiar circumstances of the parties and their relative positions and interests when the injunction was granted. The right of the respondents to an injunction, at the time when that in this case was granted, depends upon the legal position of the parties at the time, not only as to the title, but also as to the actual possession of the lands in question, or to the right of possession depending on title.

To determine the question at issue it is necessary, in the first place, to ascertain the actual position of the respondents' company, both as to title and possession.

The evidence shows that, after negotiating with the respondents' company and others in its interests, for a period of about a year and a half, an order in council was passed, on the seventh day of April, 1881, by which the Government of *Quebec* agreed to sell to the company one hundred thousand acres of crown lands in that province, including the lands now in dispute, on certain terms and conditions. That order in council embodied the result of the negotiations previously had, and, as such, was on the following day communicated to the agent and manager of the company by the Commissioner of Crown lands, who gave him to understand that he might "go ahead." He at the same time handed him a copy of the order in council, and gave him to understand that all had been done that was necessary to authorize the company to take possession of the lands under the terms of the order in council. The company had previously paid

1883
HALL
v.
CANADA
LAND AND
COLONIZA-
TION Co.
Henry, J.

the first instalment required by the order in council and the regulations of the department, and almost immediately afterwards, in April, 1881, the company entered into and took possession of the lands they had so purchased, and commenced to work thereon, and, before the issuing of the injunction, had expended between forty and fifty thousand dollars in cutting down 627 acres, on 86 of which the wood cut down had been piled, 475 acres cleared up, four houses built, and two saw mills erected. This is shown by unimpeachable and uncontradicted evidence to have been the position of matters in October, 1881. It is also shown that the company, at that time, was in the actual possession and occupation of the land immediately in question herein, and cleared on it ten acres. Such being the case, I am clearly of opinion, that they were so in possession under a good title; and could bring an action for any trespasses committed upon the lands so in their possession, against any one interfering with such possession, unless under a paramount title. The company had purchased from the government, and had, up to the time of the issuing of the injunction, fully kept the terms of the agreement they entered into. Apart from objections which I shall hereafter refer to, the government would have been estopped from forcing the company to give up the position of the lands sold, and of which, by the consent of the former, the company went into possession, and expended money so largely, notwithstanding the peculiar mode provided by the previous regulations for the sale had not been adopted. I consider that, without any statutory provision, the government might, by its inherent power, have sold and conveyed crown lands in the province. Before, however, a commissioner or other subordinate officer of the government could do so, legislative authority would be necessary; and, in conferring that power the mode and manner, and the terms upon

which, he should act, would also be necessary to be prescribed, or in some way provided for. They were so provided for by orders in council from time to time. The act made certain provisions in regard to the sale and transfer of crown lands, but much was left to be provided for by orders in council. Sec. 10, sub-sec. 2, provides that :

1883
 ~~~~~  
 HALL  
 v.  
 CANADA  
 LAND AND  
 COLONIZA-  
 TION CO.  
 ———  
 Henry, J.  
 ———

The Lieutenant Governor in Council may, also, from time to time, make such orders as are necessary to carry out the provisions of this act, according to their obvious intent, or to meet cases which may arise, and for which no provision is made by this act. \* \* \* But no such order shall be inconsistent with this act, save, that the powers herein given to the commissioner may be exercised by the Lieutenant Governor in Council and shall be subject to any order in council regulating or affecting the same from time to time.

**Sec. 15 provides that :**

The Lieutenant Governor in Council may, from time to time, fix the price per acre of the public lands and the terms and conditions of sale and of settlement and payment.

**Sec. 16 provides that :**

The Commissioner of Crown Lands may issue under his hand and seal to any person who has purchased, or may purchase or is permitted to occupy, or has been entrusted with the care or protection of any public land, or as a free grant, an instrument in the form of a license of occupation, &c.

**It makes further provision that :**

The licensee may maintain suits at law and equity against any wrong doer or trespasser, as effectually as he could do under a patent from the Crown. \* \* \* But the same shall have no force against a license to cut timber existing at the time of the granting thereof.

There are certain limitations of the executive power in the statute, but none applicable to the circumstances of this case ; but, on the contrary, notwithstanding the power given to the commissioner and other subordinate officers, the Lieutenant Governor in Council is, by sub-section 2 of section 10, fully authorized from time to time to make such orders as are necessary to

1883  
 HALL  
 v.  
 CANADA  
 LAND AND  
 COLONIZA-  
 TION Co.  
 Henry, J.

carry out the provisions of the act, "or meet such cases which may arise, and for which no provision is made by this act," and by section 15 the Lieutenant Governor in Council is authorized "from time to time" to "fix the price per acre of the public lands, and the terms and conditions of sale and of settlement and payment;" and, by the concluding paragraph, it is provided "that the powers herein given the commissioner may be exercised by the Lieutenant Governor and Council, and shall be subject to any order in council regulating or affecting the same from time to time."

The order in council of the 7th of April, 1881, having closed the negotiations with the company for the sale of the lands agreed upon, and the company having, during that month, gone into the possession of them, and commenced working thereon, the Assistant Commissioner of Crown Lands addressed a letter to the local agent as follows:

Province of *Quebec*, Department of Crown Lands, *Quebec*, 5th May, 1881:—Sir, you are hereby notified that all the lands enumerated in the accompanying list have been reserved in favor of the Dominion of *Canada Land and Colonization Company* by order in council of 7th ult. You will therefore be guided accordingly.

With regard to sales made by you of any of said lands since the date of the said order in council, including those entered in your April returns, they of course are disallowed.

You should inform the respective purchasers of such lots that they will now have to deal with the above company as regards the purchase thereof. The amount paid on those disallowed sales are placed in deposit, to be refunded on orders to that effect.

I have the honor to be,

Sir,

Charles Patton, Esq.,

Your obedient servant,

Crown Lands Agent,

(Signed) *F. E. Taché*,

*Robinson.*

Assist. Com.

It will thus be seen that on the part of the Government it was fully considered that an absolute sale had been made to the company, and that those who had



purchased from the agent after the Order in Council of the 7th April, 1881, should, in the language of the assistant commissioner, in his letter just recited, "have to deal with the above company as regards the purchase thereof." Under the plenary powers given by the statute to the Lieutenant-Governor in Council, the company was put into possession under the sale. The company had paid the first instalment as agreed upon, and, having gone into possession and conformed to all the conditions of the sale, had such an equitable title and interest as would, between individuals, have entitled them to specific performance when all the conditions on their part were fulfilled. Up to the issuing of the injunction the company had performed all the prescribed conditions; and the Government could not, at that time, have legally dispossessed them. They were therefore in a position to prosecute any mere wrong doer, who would have had to respect their possessory rights. This position cannot, I think, be successfully combatted. How, then, does the claim of the appellants stand? They claim, under a timber license dated the 3rd of May, 1881, signed by the agent of the Commissioner of Crown Lands at *Robinson*, but not issued until the 10th of July, 1881, a month or two after the company was in possession under their purchase. That license was subject, amongst others, to the following condition embodied in it:

That all lots sold or located by authority of the Commissioner of Crown Lands prior to the date hereof, are to be held as excepted from this license, and lots so sold or located subsequently shall cease to be subject to it after the April following. And whenever the sales of any such lots shall be cancelled the said lots shall be restored to this license.

The party then who obtained a timber license took it with the full understanding that all lands sold or located, though included in such license, were excepted from it, and that the license was as to such lands a nullity; and

1883  
 ~~~~~  
 HALL
 v.
 CANADA
 LAND AND
 COLONIZA-
 TION Co.
 ———
 Henry, J.
 ———

1883
HALL
v.
CANADA
LAND AND
COLONIZA-
TION CO.
Henry, J.

a licensee, by accepting the license in that form and substance, virtually and effectually agreed that, as to lands so sold, he would consider the license as inapplicable. I have before shown that, by the statute, the Lieutenant Governor in Council was authorized to perform all acts as fully as the Commissioner of Crown Lands; and, therefore, a sale by the Order in Council carries with it the same results and consequences, as if made by the Commissioner. The sale in this case is shown to have been made immediately upon his report and recommendation, and by his sanction and authority, as a member of the council. The subsequent document signed by the Commissioner on the 19th of July, could not affect the rights or position of the company under the previous Order in Council of the 7th April. The appellants took the license with the condition I have just stated; and is it for them to resist the rights of the company by questioning the propriety or regularity of the sale? If the government had previously sold or located, by the terms of the timber license the lands so sold were, at the time of its issue, excepted from those covered by the license, and no right to cut timber thereon passed by it to the appellants, and they are estopped from questioning any such sale. I think they are entirely estopped from so questioning the sale. If A lets to B certain lands for a specified term, and at a certain rent, but it is agreed that if A should sell any part or parts of such lands during the currency of the lease, such lands should thereupon cease to be included in such lease, could B after a sale by A question the propriety of the sale? Could he be permitted to say to A you have sold at too low a price, or you have given too long terms for payment, or you have sold on improper conditions or without sufficient authority? But the case before us is much stronger, for the lands in question were sold and located before the license claimed

under was issued and were never included in the license. Such, however, is set up in this case as a defence by the appellants.

It has, however, been contended that under the "regulations" the appellants were entitled by law to a renewal of the license for one year, from the 30th April, 1881. If such were the case, they had to some extent an equitable claim, as between them and the government, for the renewal, which the government under other circumstances might have recognized. On looking, however, at clause 5 of the regulations of 1881, it will at once be seen that no such position could be sustained in the total absence of proof of the performance of conditions precedent to their acquiring such equitable right. On the 30 of April, 1881, not only their license had expired, but their right also to demand a renewal thereof for another year. We must, therefore, look at the license issued to them on the 10th July, 1881, exactly as we would had it been issued to one who had held no previous license. Their right of possession of the lands covered by the previous license ended on the 30th April, 1881, and unless a new license issued they would be trespassers, if going upon the lands and cutting timber thereon. From the 30th of April, 1881, to the 10th July following, they were strangers to the possession, and, as between them and the Government, only got the right of entry on any of the lands included in the license on the day last named. Then come the questions: 1st, whether the government *having sold*, and received an instalment of the payment as agreed upon for the lands in question, and put the company in possession under the terms of the sale, could give the appellants the right to cut the very timber which had been previously sold to the company, and included in their purchase? If the government did not on the 10th July, 1881, own the timber on the lands

1883
 HALL
 v.
 CANADA
 LAND AND
 COLONIZA-
 TION Co.
 Henry, J.

1883

HALL

v.

CANADA
LAND AND
COLONIZA-
TION CO.

Henry, J.

sold to the company, how could it legally give the right to another to cut it down and convert it? The company had a legal right to all the timber growing and being on the lands they purchased, and, when subsequently complying with the prescribed conditions, would be entitled, not to bare stumps, but to growing and valuable timber. It would be inequitable in the highest degree for the government, after selling the lands, including the timber, which in many parts of them most likely constituted its principal value, and securing full payment of the sum agreed upon, to re-sell the same timber and then get paid twice for it. This, however, is the position we are asked to sustain. If this contention had been raised by the Government the doctrine of estoppel would be available, and courts of law and equity would so answer it. The doctrine of estoppel applies equally to and affects the appellants as privies of the Government as fully as it does the latter. If the Government had no ownership of the timber on the lands in question—if it was transferred with the lands to the company—it could give no title to another. But even if the Government really, under all the circumstances, did not wholly part with that ownership, but merely gave the company the right to the possession of the lands with a quasi right of property in the timber for certain prescribed purposes, another important difficulty to the appellants' contention arises—and that is, whether the licenses issued on the 10th of July, 1881, gave the appellants the right to intrude upon the possession of the company and cut and carry away timber in which the company had an interest, were excepted from those covered by the license before recited, which provided that all lots sold or located, up to the date of the license, should be held as excepted from its operation. In this case the lots were not only sold and partly paid for, as provided

by the Order in Council of the 7th April, 1881, but they were ascertained and located and set apart by metes and bounds, and the company put into possession. They had been sold, and if so, the right to cut timber on them was not included in the license.

It has been contended that the only evidence of a sale is a patent or grant; and that after a party has purchased from the government, and been put into possession of the land purchased, the government can go on issuing timber licenses over the same lands, between the time of the purchase and the granting of a patent. It is, to my mind, a monstrous proposition that the Government could, under any circumstances, sell the same property twice and get doubly paid for it.

I am of the opinion that the license of the 10th July, 1881, did not include the lands in dispute; and that the acts complained of by the respondent company were illegal and without justification.

The lands in question were sold to the company at the rate of 60 cents per acre. One-fifth of the purchase money to be paid down (which was done even before the passing of the order in council in question) and the remainder in four equal annual instalments with interest from the date of sale. The second instalment did not fall due until the 7th April after the issuing of the injunction. The company was to establish at least 40 families on the lands during the first year, &c., and but half that time elapsed from the date of sale.

The sale was subject, with regard to each lot, or farm, settled upon, to all the conditions and restrictions of an ordinary sale, as set forth in the blank form of receipt for the first instalment attached to the report of the commissioner.

By the terms of that blank form of receipt, the purchaser was:—

To take possession of the land within six months from the date

1883
 HALL
 v.
 CANADA
 LAND AND
 COLONIZA-
 TION Co.
 Henry, J.

1883

HALL
v.CANADA
LAND AND
COLONIZA-
TION Co.

Henry, J.

hereof; and from that time continue to reside on and occupy the same, either by himself or through others, for at least two years; and within four years at furthest from this date, clear and have under crop a quantity thereof in proportion of, at least, ten acres for every one hundred acres, and erect thereon a habitable house of the dimensions of, at least, sixteen by twenty feet * * *

In no case will the patent issue before the expiration of two years of occupation of the land or the fulfilment of the whole of the conditions, even though the land be paid for in full, subject also to *current licenses* to cut timber on the land, and the purchaser to pay for any real improvements now existing thereon, belonging to any other party.

Such then are the conditions referred to, as contained in the blank form of receipt; and the company, when the injunction was issued, was actively engaged in performing them all within the prescribed time. The patents were not to issue except as provided for; and it matters not in my opinion whether they were provided to be issued to the immediate purchasers, or to their assignees or appointees. If the conditions were performed, the patents were earned as provided for; and until the lands were sold by the company they had a good equitable title to them.

That equitable title was given by the Lieutenant Governor in Council duly authorized in that behalf, and legally bound to complete the titles for the benefit of the company, when the conditions of the sale were fully performed. I think it makes no difference, as to the *interim* interests of the company, it having been provided that the patents, as to the greater part of the lands, were not to be issued to the company, but to their assignees or appointees. The company was given the whole right of dominion over the lands to sell to whom, for such prices and upon such terms as the company should decide upon. The government reserved nothing in the shape of interest, but merely annexed to the sale certain conditions upon the performance of which the patents should issue. Having sold and received the

consideration therefor, the government parted with its immediate interest in the lands as owners, and if so, to whom was the transfer made? It could be to none other than the company. The latter did not take it in trust for any other party, but as its own. It had to run the risk of re-selling either at a profit or a loss. It was not in the position of an agent or trustee of the government, having only a naked trust, which in many cases creates no interest. It was, on the contrary, a purchase for value, and for a good consideration, by the terms of the contract, of the purchased property. There is nothing in the statutes or regulations, or the law, against the company occupying the position it held when the injunction was issued; and the only other question open is whether that position entitled it to that remedy.

To entitle a party to a writ of injunction, the statute requires, that a petitioner for such a writ, must be a proprietor through a valid title of the lands in question, and be in lawful possession. I have already shown that, in my opinion, the respondent company had a valid title. The statute does not require anything more than such a title as would enable a party to recover damages done to the possession, as he might do when in possession under any license of occupation or ticket of location issued by a commissioner of Crown lands, and I consider the order in council of the 7th of April, 1881, a copy of which was on the following day given by the commissioner of Crown lands to the agent of the company with instructions to act thereunder, as effectual for the purpose of giving the right of possession as a ticket of location, but independently of that proposition the company was in possession under a valid purchase, and it matters not whether that sale was made by the government or by a private party. The law applies in the one case as effectually as in the other. The actual possession of the company was clearly proved,

1883

HALL,

v.

CANADA
LAND AND
COLONIZA-
TION Co.

Henry, J.

1883

HALL

v.

CANADA
LAND AND
COLONIZA-
TION CO.

Henry, J.

and the statute provides that the writ may issue against "any person who has not acquired the possession one year, and who has no valid title to the property."

I have already shown that the possession of the appellants—which, at best, was only for the specific purpose of cutting and carrying away timber—ended on the 30th April, 1881, that the appellants were not therefore in possession for one year as the statute provides, and that the license to them subsequently did not cover the lands in question. The provisions of the statute are therefore fulfilled in all particulars as to the right of the respondent company to the injunction.

The statute limits the common law right as we find it in *England*; as, in the latter, an injunction will be allowed to restrain even a party in long possession from cutting down timber or in any way doing a permanent injury to the estate.

In the case of *Loundes v. Bittle* (1), Vice-Chancellor *Kindersley* gave an exhaustive judgment on the subject of injunction; and after reviewing the leading cases up to that time, (1864), says:—

I have gone into the cases on this subject at more length on account of the difficulty in finding the principle upon which to act. That principle, however, appears to me this: where a defendant is in possession and a plaintiff claiming possession seeks to restrain him from committing similar acts to these, the court will not interfere, unless indeed (as in *Neal v. Cripps*) the act is so flagrant an act of spoliation as to justify the court in departing from the general principle. But, where the plaintiff is in possession, and the person doing the acts complained of is an utter stranger, not claiming under the colour of right, then the tendency of the court is not to grant an injunction, unless there are special circumstances, but to leave the plaintiff to his remedy at law, though where the acts tend to the destruction of the estate the court will grant it. But where the person in possession seeks to restrain one who claims by adverse title, then the tendency will be to grant the injunction, at least, where the acts done either did or might tend to the destruction of the estate.

In that case a perpetual injunction was granted.

It will be observed, that in the second case put by the learned Vice-Chancellor, he says :—

That where the plaintiff is in possession, and the person doing the acts complained of is an utter stranger, not claiming under the color of right, then the tendency of the court is not to grant an injunction unless there are special circumstances. * * *

Though where the acts tend to a destruction of the estate, the court will grant it.

Here, then, the cutting down and the carrying away of the timber could be nothing less than the destruction of the estate. In large districts of the country the land is worthless for cultivation, as is the case with a good deal of that in question, and becomes worthless as soon as the timber is removed from it. The principal utility of an injunction is to prevent such spoliation by irresponsible parties, but it will also be seen that, where the person in possession seeks to restrain one who claims by adverse title, the tendency is to grant an injunction, at least where the acts done either did or might tend to the destruction of the estate.

I am of the opinion that both by provisions of the statute and common law as above referred to the respondent company was entitled to the injunction, and I agree with a majority of the court below, that the same should be made perpetual with costs in all the courts.

TASCHEREAU, J. :

For the reasons given by Mr. Justice *Tessier* in the Court of Queen's Bench, I think that the plaintiff had no right to this injunction, and that the judgment of the Superior Court which quashed it was right. I am of opinion, therefore, to allow this appeal. The contention, that without an injunction the plaintiff would have necessarily been exposed to suffer an irreparable injury, is not serious. It is only since four years that

1883

HALL

v.

CANADA
LAND AND
COLONIZA-
TION Co.

Henry, J.

1883
 ~~~~~  
 HALL  
 v.  
 CANADA  
 LAND AND  
 COLONIZA-  
 TION CO.  
 —

this writ has been introduced into *Quebec*, and to maintain the plaintiff's contention on this point, would be to say, that it is only since four years that, in the province of *Quebec*, a plaintiff can stop a defendant, *pendente lite*, from destroying or damaging the property in contestation. I would call this a libel on our laws.

GWYNNE, J. :—

I am of opinion that this appeal should be dismissed with costs and that the judgment of the Court of Queen's Bench in *Montreal* in appeal should be affirmed. A contrary judgment would in effect place it in the power of a single officer of the Executive Government to defeat what must have been known to be the intent and object of the land company in paying their money and in entering into the contract, which with the sanction and upon the suggestion of such officer they had entered into with the Executive Government of the Province of *Quebec*, and so, in fact, to deprive the land company of the benefit of that contract after the payment of that portion of the purchase money which was accepted as such by the government of the province when the contract was entered into, and after the disbursement by the company of a large sum of money upon the faith of the contract, and after the fulfilment by the company of all the terms and conditions of the contract upon their part agreed to be performed.

The circumstances under which the contract with the land company was entered into will best appear by reference to the report of the Commissioner of Crown Lands to the Executive Government of the Province of *Quebec*, dated the 3rd March, 1881, which contains the terms of the contract, and which is entitled: "On the application of the Dominion of *Canada* Land and Colonization Company for the purchase of certain public lands in this province." In that report "the under-

signed Commissioner of Crown Lands has the honor to set forth that on the 13th December, 1879, he received the following application from *Francis W. Stockwell, Esq.*, dated the fifth of said month."

On behalf of several English capitalists I have the honor to apply for three hundred thousand acres of crown lands situated in the townships of *Price, Whitton, Marston, Ditchfield, Spalding, Gayhurst, Risborough, Marlow, Jersey, Shanley and Mitgermette*, or elsewhere, provided that the whole quantity is not obtainable in those townships. The object of the purchasers is to settle the lands in different sized farms, or to dispose of them to farmers from the Old Country, who intend more especially to go into the breeding of cattle for exportation to foreign markets, the purchase money to be paid cash in exchange for deeds at the prices named in the *Settlers' Guide of 1877*.

(Signed,)

*Francis W. Stockwell.*

That to this communication the following reply was addressed, dated 3rd December, 1879, and approved in council same date :

In reference to your written application of the 5th instant, which you have since, at different interviews with members of the Government, renewed verbally, on behalf of several English capitalists for three hundred thousand acres of Crown lands in certain townships therein mentioned with a view of settling the lands in different sized farms and disposing of them to farmers principally from *Great Britain*, who intend more especially to go into the breeding of cattle for exportation to foreign markets, I am duly authorised by the executive council of the Province of *Quebec* to state that if the parties whom you represent form and organize themselves into a company for the purpose of such scheme as above set forth, and furnish proof of the legal existence of such company within two months from this date, and state their readiness to pay the first instalment of the purchase money and to conform to the other conditions hereinafter mentioned, the Government of the Province will be prepared to pass an order in council for the sale to such company of one hundred thousand acres of land to be designated by mutual agreement between the Government, or the commissioner of crown lands, and the company in some of the following townships, viz: *Prince, Whitton, Ditchfield, Gayhurst, Risborough, Marlow, Jersey, Shanley, Adstock, Forsyth, Humqui, Arvaitjish, Nictalick, Wemtaye, Langevin and Watford*. The sale, if carried out, will be made upon the following conditions :

1883  
HALL  
v.  
CANADA  
LAND AND  
COLONIZA-  
TION Co.  
Gwynne, J.

1883

HALL  
v.CANADA  
LAND AND  
COLONIZA-  
TION CO.

Gwynne, J.

1st. The lands shall be sold at 60 cents per acre, one-fifth of the purchase money shall be paid down immediately upon the passing of the order in council, and the remainder in four equal annual instalments, with interest from the date of sale.

2nd. The company shall establish at least forty (40) families on the lands herein referred to during the first year after the sale, at least sixty (60) families during the second year, and fifty during each of the third and fourth years, in no case allotting more than five hundred acres to any one family or settler.

3rd. The sale shall be subject with regard to each lot or farm settled upon to all the conditions and restrictions of an ordinary sale as set forth in the blank form of receipt for first instalment, attached hereto as follows :

No. 225.

Crown Lands Agency,

\$

187

[L.S.]

Received from the sum of being  
the first instalment of one-fifth of the purchase money of  
acres of land contained in lot No. in the range of the  
township of , P. Q., the remainder payable in four  
equal annual instalments with interest from this date.

The sale, if not disallowed by the Commissioner of Crown Lands, is made subject to the following conditions, viz: The purchaser to take possession of the land within six months from the date hereof and from that time continue to reside on and occupy the same, either by himself or through others for at least two years; and within four years at furthest from the date clear and have under crop a quantity thereof in proportion of at least ten acres for every one hundred acres, and erect thereon a habitable house of at least sixteen by twenty feet. No timber to be cut before the issuing of the patent, except under license, or for clearing of the land, fuel, building and fences. All timber cut contrary to these conditions will be dealt with as timber cut without permission on public lands. No transfer of the purchasers' right will be recognised in cases where there is default in complying with any of the conditions of sale. In no case will the patent issue before the expiration of two years of the occupation of the lands, or the fulfilment of the whole of the conditions, even though the land be paid for in full, subject also to current licenses to cut timber on the land, and the purchaser to pay for any real improvements now existing thereon belonging to any other party.

Agent.

*Caution.*—If the Commissioner of Crown Lands is satisfied that any purchaser of public lands or any assignee claiming under him,

has been guilty of any fraud or imposition, or has violated or neglected to comply with any of the conditions of sale, or if any sale has been made in error or mistake, he may cancel such sales and resume the land therein mentioned and dispose of it, as if no sale thereof had been made. Extract from 20 sec. Act, 32 Vic., ch. 11. Also to the provisions of the fifteenth section of the regulations for the sale of mineral lands approved by the Lieutenant Governor in Council on the 11th May, 1874, and now in force, said section having reference to the sale of lands in gold mining divisions, and it shall also be subject to the provisions of the fifteenth section of the Phosphate Mines Act, 41 Vic., ch. 4.

1883  
HALL  
v.  
CANADA  
LAND AND  
COLONIZA-  
TION Co.  
—  
Gwynne, J.  
—

4th. No letters patent shall be issued for any of the lands sold to the company until the full price of the whole 100,000 acres be paid and all conditions of the sale be fulfilled.

5th. If the purchase money be not paid as above stated, or failing the fulfilment of any of the conditions of sale, the sale shall be cancelled in accordance with the provisions of the law 32 Vic., ch. 11, sec. 20, and the land shall revert to, and remain the absolute property of the Crown, as if the same had never been made; and the company shall forfeit any and all sums of money that may have been paid to the Government on account of these lands, and all improvements that may have been made thereon.

6th. No patent shall be issued for any of these lands in the name of the company, but only at the instance of the company, or in virtue of assignments made by it, to and in favor of the actual and *bonâ fide* settlers on the respective farms; nor shall any patent be issued in favor of any one individual for more than four hundred acres of land.

(Signed) E. J. Flynn, C. C. L.

“That on the 28th February, 1880, the undersigned received notification by telegraph of the incorporation of the company on whose behalf Mr. *Stockwell* applied, and on the 18th April following he also received, through Mr. *Stockwell*, a notarial copy of an extract from the minutes of a meeting of the directors of the Dominion of *Canada Land and Colonization Company* (limited), held at No. 80, *Bishopsgate street, London*, on the 16th March, 1880, the subject of which was to the effect of authorizing the said *Francis W. Stockwell* to act as agent of said company, especially in communicating with the Government of this Province relative to said

1883  
 HALL  
 v.  
 CANADA  
 LAND AND  
 COLONIZA-  
 TION Co.  
 Gwynne, J.

company's application ; also for the obtaining of certain modifications in the terms of the letter of 30th December, 1879, above embodied, and instructing him (*Stockwell*) to state to the Government that the company were prepared to pay the first instalment of the purchase money and conform to the other conditions of the before-mentioned letter upon an Order in Council being passed with certain suggestions, alterations, &c.

"That the document was accompanied by a letter from *Henry C. Barker*, Esq., solicitor, pointing out the modifications required.

"That the said letter and document were acknowledged by the following reply, dated 13th April, 1880.

SIR,

I have the honor to acknowledge the receipt of your letter of the 12th instant, enclosing the following documents :

1st. An extract from the minutes of a meeting of the directors of the Dominion of *Canada Land and Colonization Company* (limited).

2nd. A letter dated *London*, 18th March, 1880, addressed to yourself by *Henry C. Barker*, Esq., solicitor, and recommending that certain modifications be made to clauses 4, 5 and 6 of the letter addressed by me to you in the name of the Government of this Province of the 30th December last, in reference to the sale of 100,000 acres of land to the above mentioned company, and in answer thereto I am authorized by the executive council of the Province to state that the clauses above referred to will be modified in the following manner :

Clause 4.—The following words to be added thereto : Nevertheless, after the expiration of the two years occupation required to entitle settlers to letters patent, and after the payment by the company of the second instalment of the purchase price of the 100,000 acres a settler may pay up the balance, if any due on his lot ; and on proof of his having fulfilled all the settlement conditions as regards the said lot he will be entitled to obtain letters patent for the same ; and should the whole purchase money for the 100,000 acres be paid up at the time *à fortiori*, any settler on proof of the settlement conditions being performed as regards his lot, may obtain letters patent therefor.

Clause 5 to be construed in such a manner as not to be in contradiction to clause 4 as modified.

Clause 6.—The following words to be added :

Nevertheless, the company shall be entitled to receive in their own name for the purposes mentioned in Mr. *Barker's* letter a grant for five thousand acres on their paying the full purchase money for the same, on clearing the number of acres required by the regulations of the department, to wit: ten acres for every hundred acres, and erecting thereon buildings of the value of at least one thousand dollars. The regulations of the department in reference to the cutting of timber and the transfer of the rights of the purchaser before letters patent are issued as embodied in the location ticket annexed to my letter of the 30th December, 1879, to be adhered to until the company shall receive letters patent for the said five thousand acres.

As to the rate of interest on the different instalments from the date of purchase, it is the legal rate, to wit: six per cent.

You will observe by the second clause that the company is bound to establish at least forty families during the first year after the sale; at least sixty families during the second year, and fifty during each of the third and fourth years. It is obvious that the company shall be at liberty to establish as many as they can of the two hundred families at the earliest possible period, the number mentioned for each year being fixed as a minimum.

(Signed),

*E. J. Flynn, C. C. L.*

"That on the 13th March, instant, Mr. *Stockwell* fyled in the office of the Department of Crown Lands the certificate of incorporation and articles of association of the aforesaid company, the said articles embodying among other subjects the following:—

To purchase, lease, obtain concessions of or otherwise acquire lands and hereditaments of any tenure, or to obtain any interest in any lands and hereditaments in the Dominion of *Canada* or elsewhere, and to work, manage, and develop the same in such manner as the said company shall think fit, and to erect warehouses, factories, wharves, dwellinghouses, stores, and such other premises, buildings, machinery and plant, and to make such roads, tramways and canals, or other works of a like or similar nature as may be necessary for the purposes of the company. To carry on the business of farming in all its branches, breeding sheep, cattle and horses, or any other business, trade, or undertaking, the carrying on of which may be deemed by the company conducive to the development of its property or interest therein, and particularly to do all acts conducive to the colonization and settlement of the lands of the company, &c., &c.

That the legal status of the said company in this province, according to the above mentioned certificate of incorporation, received the

1883

HALL  
v.

CANADA  
LAND AND  
COLONIZA-  
TION CO.

Gwynne, J.

1883

HALL  
v.CANADA  
LAND AND  
COLONIZA-  
TION CO.

Gwynne, J.

approval of the Honorable Solicitor General on the 24th March, instant.

That the said company has selected lands amounting to 99,998½ acres as arranged and specified in the annexed lists, and has also on the 29th January last deposited to the credit of the Department of Crown Lands the sum of twelve thousand dollars (\$12,000) to be applied on account of the purchase of the lands in question.

After due consideration of the facts above detailed the undersigned has the honor to recommend that he be now authorized to carry out the terms and intentions of his letter of the 30th December, 1879, addressed to the aforesaid *Frs. W Stockwell*, with the modifications allowed by subsequent letter of the 13th April, 1880, above embodied, and to sell to the said Dominion of *Canada* Land and Colonization Company the lands in question in accordance with the terms and conditions of the above mentioned letters.

The whole respectfully submitted.

(Signed,)

*E. J. Flynn,*

Com. of Crown Lands.

Quebec, 30th March, 1881.

To the above report was annexed the lot of lands selected and agreed upon between the company and the Commissioner of Crown Lands as the lands affected by the above report, and for the first instalment of the purchase money for which the company had, as stated in the report, deposited the sum of \$12,000 to the credit of the Department of Crown Lands.

Now, it will be observed, that as appears by the above document, the whole of the negotiations for the purchase of the said lands by the company were carried on by the company with the Executive Council of the province, through the instrumentality and intervention of the Commissioner of Crown Lands, of which Executive Council he was himself a member, and that the terms and conditions of the proposed purchase and sale were settled and agreed upon by and between the company and the said Executive Council, the Commissioner of Crown Lands being the medium adopted for communicating to the company the terms and conditions of the sale as agreed to and required by the Executive Council



of the province, and that all this had taken place before the whole, as a matter of form merely, was submitted to the Lieutenant Governor in Council for his approval, which was done by a report of a Committee of the Executive Council, as follows:—

1883  
HALL  
v.  
CANADA  
LAND AND  
COLONIZA-  
TION CO.

*To the Honorable Theodore Robitaille, Lieutenant Governor of the Province of Quebec, &c., &c.:*

Gwynne, J.

Report of a Committee of the Executive Council on matters referred to their consideration.

PRESENT:

The Honorable Mr. *Chapleau*, in the chair.

" Mr. *Ross*.  
" Mr. *Loranger*.  
" Mr. *Lynch*.  
" Mr. *Flynn*.

In Council on land matters.

*May it please Your Honour:* The Committee have had under consideration the annexed report of the Honorable the Commissioner of Crown Lands, dated the thirteenth of March last, 1881, concerning the application of the Dominion of *Canada Land and Colonization Company* for the purchase of certain lands in the Province of *Quebec* and submit the said report for the Lieutenant Governor's approval.

(Signed,)

*J. A. Chapleau,*

Chairman of Committee.

Upon this report the Lieutenant Governor signed his approval upon the 7th April, 1881.

Upon the following day the recognised agent of the company having expressed to the Commissioner of Crown Lands his desire to give out a contract for the purpose of fulfilling the terms agreed upon by the company, and to commence clearing, the Commissioner delivered to such agent a copy of the above document, (with the list of lands thereto attached,) so approved by the Lieutenant Governor, informing such agent at the same time that all was right, and that he might go ahead as soon as he liked, in consequence of which the company entered into contracts for the outlay of, and did expend, a large sum of money amounting to from \$40,000 to \$50,000 in fulfilment of the terms and

1883

HALL

v.

CANADA  
LAND AND  
COLONIZA-  
TION CO.

Gwynne, J.

conditions upon which the sale had been agreed to by the executive council, as embodied in the above document or act of council.

Now, upon the delivery by the Commissioner of Crown Lands to the company's agent of a copy of the document so prepared by him with the sanction and under the direction of the executive council, which, upon their report, was approved by the Lieutenant Governor if not *eo instanti* of the original having been signed by the Lieutenant Governor, I am of opinion that a complete contract of sale of the lands specified was entered into by the executive government of the Province with the company upon which the company had paid, and the Government had received, the sum of \$12,000 as and for the first instalment of the purchase money agreed upon, and that the Commissioner of Crown Lands could not thereafter by any act of his impose any terms, conditions or obligations upon the company greater than those contained in the document so approved, or detract from the rights intended to be conferred upon the company and contracted for by them as embodied in such document so prepared and approved, without, at least, the special consent of the company in that behalf obtained. I cannot doubt that the company became liable to pay interest upon the balance of the purchase money from the date of the order in council defining the terms and conditions of the sale, one of which was that the interest should accrue from the date of sale. That this order in council was regarded as the contract of sale is apparent not only, as it appears to me, from the terms and conditions agreed upon—from the reception of the first instalment of the purchase money—and from the delivery of a copy of the terms and conditions of sale as agreed to by the council and signed and approved by the Lieutenant Governor with directions to the agent of the company

to enter into possession and to proceed with the fulfilment of the terms and conditions of the sale upon the part of the company to be fulfilled, but also from the acts of the department of Crown lands as appearing in the letter of the 5th May, 1881, from the department to the Crown land agent, in whose district the lands selected by the company and for which they had paid the first instalment of purchase money were situate, informing him that all the lands enumerated in the list forwarded to him had been reserved in favor of the Dominion of *Canada* Land and Colonization Company by order in council of the 7th April, and that he should therefore be guided accordingly; and that with regard to any sales, if any were made by him since the date of the said order in council, *they are of course disallowed*, and that he should inform the respective purchasers of such lots that they would now have to deal with the above company as regards the purchase thereof; and by the telegram of the 10th May from the Crown lands department to the same agent, directing him not to renew licenses for timber lands comprised in the townships of *Whitton, Spaulding, Louise* and *Ditchfield* until advised to the contrary. So perfected was the contract of sale that, in my opinion, there can be no doubt that upon the 8th of April it was lawful for the company to enter upon the lands and to proceed as they did in the fulfilment of the terms and conditions embodied in the document approved and signed by the Lieut.-Governor on the 7th April; and that upon the fulfilment of those conditions by themselves and their assigns and nominees to be performed, they would be entitled to demand and have letters patent issued to themselves as to the five thousand acres and to their nominees or assignees as to the residue.

It might be quite competent for the commissioner of

1883  
 HALL  
 v.  
 CANADA  
 LAND AND  
 COLONIZA-  
 TION CO.  
 —  
 Gwynne, J.  
 —

1883

HALL

v.

CANADA  
LAND AND  
COLONIZA-  
TION Co.

Gwynne, J.

Crown lands, in consequence of the contract for sale of the lands to the company having been so perfected, to issue to the company under his hand and seal under the provisions of 32 *Vic.*, ch. 11, sec. 16 of the statutes of the Province of *Quebec*, a license of occupation or a certificate of sale under 39 *Vic.*, ch. 10, but no such license or certificate was necessary in order to effect a completion of the contract between the executive Government of that Province and the company; this had already been completed by the terms and conditions of sale having been concluded and agreed upon, and if any such license of occupation or certificate should be issued it could not operate in the slightest degree to make any variation by addition to, or detract from, the terms of sale which had already been agreed upon with the company, upon the faith of which, the instalment of purchase money paid and accepted at the time of the contract of sale being entered into had been paid and accepted. The above statutes, while they authorize the Commissioner of Crown Lands and his deputies or agents to issue licenses of occupation and certificates of sale after contracts of purchase have been entered into, under the powers conferred upon the commissioner by orders passed in council prescribing the terms and conditions upon which ordinary contracts may be entered into by the commissioner and his deputies upon behalf of the Government, never contemplated depriving and, in my opinion, do not deprive the executive Government of the power vested in it to enter into contracts of sale of a special character upon such special terms in each case as may be agreed upon between it and applicants for the purchase of Crown lands, and expressed in orders in council passed *pro re nata*. The 32nd *Vic.*, ch 11, the 16th sec. of which enacts that "The Lieutenant-Governor in Council may, from time to time, fix the price per acre of the public

lands and the terms and conditions of sale, and of settlement and payment," is as potential to enable the Government to enter into a special contract, as it is to enable it to prescribe the terms upon which the Commissioner of Crown lands and his deputies may, in the ordinary course of business of the Crown lands office, enter into contracts upon behalf of the Government with intending purchasers. The authority which the Commissioner of Crown Lands and his deputies have under orders in council to bind the Government by contracts entered into by them upon behalf of the Government, is given for the purpose of facilitating the business of the Government with applicants for land upon the ordinary terms sanctioned by the council, but the fact that a portion of the power of the executive council is, for convenience and the better despatch of business, conferred upon the commissioner, cannot deprive the council (which prescribes and sets in its discretion limits to the powers of the commissioner) of its own independent power, of itself entering into special contracts as the supreme executive department of the Government, with applicants for land upon terms not authorized by the order in council regulating ordinary sales. The power given to the Commissioner of Crown Lands to issue licenses of occupation by the 16th sec. of the Act is limited to granting them to any person who has purchased, or who may purchase, or who is permitted to occupy, or who has been entrusted with the care or protection of any public land, or as a free grant, and the object and effect of such license if, and when issued, is not to create a contract, but to afford evidence of a contract of some character having been entered into, and to enable the person to whom the license is given, although not in actual possession, upon the production of it in any court of law or equity, to assert title against any person in

1883  
 HALL  
 v.  
 CANADA  
 LAND AND  
 COLONIZA-  
 TION Co.  
 Wynne, J.

1883

HALL

v.

CANADA  
LAND AND  
COLONIZA-  
TION CO.

Gwynne, J.

possession equally as he could under letters patent, subject to the sole qualification that the license of occupation should have no force against a license to cut timber existing at the time of the granting of the license of occupation; as to wrongs of the nature of trespass upon a person in actual possession, such possession alone without any license of occupation would enable the person in possession to maintain an action of trespass against the trespasser. Contracts of sale entered into by the government with a purchaser and a license of occupation, are two wholly distinct things; as appears not only from the 16th section of the Act above referred to, but from the 20th also and the 21st. By the 20th provision is made enabling the Commissioner of Crown Lands in certain cases of fraud or imposition, or in case of non-compliance with any of the conditions of a sale, grant, location, lease, or license of occupation, "to cancel such sale, grant, location lease, or license of occupation," and the 21st section makes provision for the case of any person refusing to give up possession of any land "after the revocation or cancellation of the sale, grant, location, lease, or license of occupation thereof as aforesaid," shewing plainly that the legislature regarded a sale and a license of occupation as two distinct things. The office of the contract of sale is to define the rights of the purchaser to the thing contracted for, and to show what the thing contracted for is; the office of the license of occupation is merely to afford evidence of the existence of a right to possession sufficient to enable the holder of the license upon its mere production to maintain actions without necessitating any enquiry into the nature or terms of the contract in pursuance of which the license was issued, namely, whether it was a contract of sale, or of lease, or for mere temporary occupation, or for the protection of the land by the holder as caretaker, or for a free grant.

In the case of ordinary sales contracted for with the Commissioner of Crown Lands, it may be convenient that the license of occupation given to a purchaser should contain the terms of the sale, but it is not necessary that it should, no form for such license is given by the statute, and it would be just as effectual for the purpose for which it is intended, namely, to enable the holder to maintain actions at law or equity, if it should not contain any of the terms of sale. But where the terms of sale are of a special character, and are embodied in a written document prepared for the purpose of showing the terms and conditions of the sale, or in several written documents, as in this case, in letters addressed by the applicants to the Government, and in documents showing the action of the council thereon communicated by the council through the commissioner to the applicants, these written documents containing all the terms and conditions of the contract constitute the contract, and effectually raise the question in issue between the parties to this litigation which is, what is the proper construction to be put upon this contract, and what is its effect as against the appellants who are claiming under another species of contract with the Government, called a timber license, in virtue of which they assert a right to cut and carry away the timber growing upon the lands which are the subject of the contract of purchase and sale entered into by and between the land company and the Government?

The contention of the appellants is that the land company's title dates only from the date of the certificate of the Commissioner of Crown Lands of the 19th July, 1881, endorsed upon the original order in council, prescribing the terms and conditions as approved by the Lieutenant-Governor after having been agreed upon by and between the company and the executive coun-

1883  
HALL  
v.  
CANADA  
LAND AND  
COLONIZA-  
TION Co.  
Gwynne, J.

1883

HALL

v.

CANADA  
LAND AND  
COLONIZA-  
TION Co.

Gwynne, J.

cil of the Province, but no such certificate was necessary to perfect the contract, that had already been perfected and concluded by the signature of the Lieutenant-Governor upon the 7th April, 1881, to the document containing the terms and conditions of sale as agreed to by and between the company and the executive council and acknowledging the receipt by the Government of the first instalment of the purchase money, or, at least, upon the delivery to the agent of the company by the Commissioner of Crown Lands upon the 8th of April, of a copy of the document so approved and signed; any certificate signed by the Commissioner of Crown Lands, if any had been issued, should have been, as it appears to me, to the effect that the executive government had upon the 7th April concluded a contract for the sale of the lands in question to the company upon the terms and conditions embodied in a document signed and approved upon that day by the Lieutenant Governor in Council. Such a certificate is the only one which, in my opinion, would correctly state what had taken place. I can conceive no object to be served by, or any necessity whatever for, the issuing of any certificate signed by the Commissioner of Crown Lands after the terms and conditions of the sale had been conclusively agreed upon between the company and the executive, and the receipt of the first instalment of purchase money, unless it be to serve as evidence of a contract of sale having been previously entered into, a fact which independently of any certificate abundantly appears by the evidence in this case, which sets out at large all the negotiations for the contract, which was so, as aforesaid, consummated by the formal approval of the Lieutenant Governor in Council to the terms and conditions as agreed upon between the applicants and the Executive Council.

The rights of the company, therefore, must be ascer-



tained by putting a construction upon the document so signed, containing, as it does, all the terms and conditions of the sale, wholly independently of, and without any reference to, the certificate of the Commissioner of Crown Lands endorsed thereon, to which the company have no occasion to refer, upon which they do not rely, and by which they cannot be prejudiced in the enjoyment of any of the rights contracted for by them as embodied in the document containing all the terms and conditions of their purchase. In construing this document, it is, however, necessary to consider the title upon which the appellants rely as giving them the timber growing upon the lands purchased by the company.

The appellants appear to have had, for several years, licenses issued in each year to cut timber upon the lands in question; those licenses terminated on the 30th of April in each year; it was a term and condition of these licenses, and was so of that in existence on the 7th April, 1881, when the terms and conditions of the sale to the land company were finally and formally concluded by the signature of the Lieutenant Governor in approval of the terms as previously agreed to by the members of his executive council, the party constitutionally competent to prescribe the terms of the contract with the land company—that all lots of land mentioned in the timber license which should be sold, or located by authority of the Commissioner of Crown Lands subsequently to the date of such license, should cease to be subject to it after the following 30th day of April, and that whenever the sales of any such lots should be cancelled, the said lots should be restored to the license. Now, it is apparent, that the words “sold” or “located,” as used here apply, the former to “contracts” of sale, and the latter to locations under license of occupation, whether to lessees, caretakers,

1883  
HALL  
v.  
CANADA  
LAND AND  
COLONIZA-  
TION CO.  
Gwynne, J.

1883

HALL

v.

CANADA  
LAND AND  
COLONIZA-  
TION Co.

Gwynne, J.

persons having free grants, or having possession otherwise than as purchasers. That the word "sold" refers to the contract of sale is apparent from the provision that "whenever the sales of any such lots shall be cancelled" (which could only be done while the contract is *in fieri*, "the said lots shall be restored to the license." The effect therefore of this provision in the timber licenses is that all lots contracted to be sold during the year while the license is in force shall cease to be subject to any renewal of such license made after the 30th day of April next, after the date of such contract of sale.

If, then, the contract between the Executive Government of the Province of *Quebec* and the land company was complete, as I am of opinion that it was upon the 7th, or, at least, upon the 8th of April, 1881, the lots so contracted to be sold became exempt from the operation of any renewal of the appellants timber licenses, and consequently the renewal of their license in the month of July, 1881, by the local agent of the Commissioner of Crown Lands was ineffectual to give to the appellants any right to any timber growing upon the lands so contracted to be sold to the company, which timber constituted a very material part of the thing which they had contracted to purchase, and for which they had paid, and the Government had received from them the first instalment of the purchase money agreed upon. Clause 3 in the terms and conditions of the sale to the company, which was relied upon by the appellants as in support of their contention that the timber was not to be exempt from the appellants license until letters patent should issue proves, to my mind, quite the contrary: The first condition of the sale is that one fifth of the purchase money was to be paid down immediately after the passing of the order in council, namely, the order in council which, in the preceding sentence of the Commissioner of Crown

Lands report, it is stated that he was authorised by the Executive Council of the Province of *Quebec* to state to the agent of the applicants, that if the parties whom he represented would form themselves into a company for the purpose of the scheme of colonization which they proposed, and would furnish proof of the legal existence of such company, and would state their readiness to pay the first instalment of purchase money and to conform to the other conditions hereinafter mentioned, the government of the province would be prepared to pass an order in council for the sale to such company of 100,000 acres of land, to be designated by mutual agreement between the Government or the Commissioner of Crown Lands and the company in some of the following townships, &c., &c.

The sale to be upon the following conditions: Then the third condition provides that "the sale shall be subject," &c., &c. What sale can this be other than the sale which the Executive Government thus became pledged to make to the Land Company, and in respect of which it was provided in the first clause that the first instalment of the purchase money should be paid immediately upon the passing of the order in council, and which in a subsequent part of the document signed by the Lieutenant Governor is acknowledged to be paid; but to remove all doubt, the third clause provides that the sale upon which the first instalment of purchase money is to be paid, and which, as matter of fact, was paid before the execution by the Lieutenant Governor of the document containing the terms and conditions of the sale, shall be subject with regard to each farm or lot settled upon, to all the conditions and restrictions of an ordinary sale as set forth on the blank form of receipt for first instalment attached hereto; and not content with such reference adds, "as follows": "This sale is, &c., &c., made subject to the following condi-

1883  
 HALL  
 v.  
 CANADA  
 LAND AND  
 COLONIZA-  
 TION Co.  
 Gwynne, J.

1883

HALL

v.

CANADA  
LAND AND  
COLONIZA-  
TION CO.

Gwynne, J.

tions." Now what is the effect of this, but plainly to import into this sale to the Land Company the conditions endorsed upon the blank form of receipt for first instalment of purchase money in the case of ordinary sales, in so far as consistently with other special terms and conditions of this sale to the Land Company, they could apply the condition. That the purchaser shall take possession of each farm or lot settled upon within six months from the date hereof, and from that time continue to reside on and occupy the same by himself or through others for at least two years, and within four years at furthest from this date clear, and have under crop a quantity thereof in proportion of at least ten acres for every one hundred acres, and erect thereon a habitable house of the dimensions of at least sixteen by twenty feet, could not apply, for special provision to the contrary is made by the 2nd clause of the conditions of the sale by which it is prescribed that the company shall establish at least forty families during the first year after the sale, at least sixty families during the second year and fifty each of the third and fourth years, in no case allotting more than five hundred acres to any one family or settler, but the other conditions of an ordinary sale can and do apply; that is to say: "This sale to the land company is made subject to the condition that no timber is to be cut upon any of the lots or farms settled upon before the issuing of letters patent for such, except &c., &c., &c.;" and that "all timber cut contrary to this condition will be dealt with as timber cut without permission on public lands;" and that "no transfer of the purchaser's (that is, the land company's) rights will be recognized in cases where there is default "in complying with any of the conditions of sale;" and that "in no case will the patent issue for any farm or lot settled upon (such farm or lot not to exceed 500 acres) before

the expiration of two years from the occupation of the farm or lot by a settler, or before the fulfilment of the whole of the conditions" of this sale to the land company, even though the land be paid for in full; and "this sale is subject also to current licenses to cut timber on the land, and the purchaser (that is, the land company) to pay for any real improvements now existing thereon belonging to any other party."

It is, to my mind, plain that it is this sale to the land company, the terms of which were being arranged between the land company and the Government of the Province of *Quebec*, that was to be subject to all these conditions, including this last as to current licenses to cut timber on the land; the only current license to cut timber was that which expired upon the 30th April, 1881. It is, to my mind, therefore, clear that the contention of the appellants, which would have the effect of depriving the land company of the chief value of the thing which they contracted to purchase from the Government and the Government contracted to sell to the company, and for which the latter have paid, and the former received, the purchase money agreed upon, cannot be allowed to prevail.

The only other point is as to the right of the plaintiffs in the court below to obtain a writ of injunction under 41 *Vic.*, ch. 4.

That the land company as purchasers for value under a valid contract entered into with them directly by the executive Government of the Province are in lawful possession of the lands in question, through a valid title in virtue of their contract of purchase made with the executive Government, wholly independently of any certificate signed by the commissioner of Crown lands within the meaning of the above Act, and so as to entitle them to the benefit of its provisions, does not appear to me to admit of a doubt, and as against the

1883  
HALL  
v.  
CANADA  
LAND AND  
COLONIZA-  
TION CO.  
Gwynne, J.

1883  
HALL  
v.  
CANADA  
LAND AND  
COLONIZA-  
TION Co.  
Gwynne, J.

defendants asserting a title which, in my opinion, they fail to establish, to take the timber growing on the land purchased by the company, the latter are entitled to protection by injunction, as indeed the only effectual remedy to enable them to protect the property they have purchased from irreparable injury amounting to the absolute destruction of the chief part of the estate purchased, and the existence of which, as constituting part of the thing purchased, we can well understand, as indeed is sworn to in the case, formed the chief motive which induced the company to make the purchase. The appeal therefore should, in my opinion, be dismissed, and the judgment of the Court of Queen's Bench in *Montreal* in appeal, granting the injunction, affirmed.

*Appeal allowed with costs.*

Solicitors for appellants: *W. & A. H. Cook.*

Solicitors for respondents: *Ives, Brown & French.*

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