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HIS MAJESTY THE KING (RESPONDENT) APPELLANT;  
 AND  
 S. D. McCLELLAN (SUPPLIANT) . . . . . RESPONDENT.

1932

\*Apr. 28.

\*Jun. 15.

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ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Soldier's Settlement Act—Agreement to purchase—Default in payments—  
 Property not kept in good condition—Notice by Crown to rescind  
 agreement—Action to recover land and chattels—Tenancy at will—  
 Reciprocal rights of parties to agreement—Soldier's Settlement Act,  
 R.S.C., 1927, c. 188, ss. 22 and 31.*

The Soldier's Settlement Board entered into an agreement with the respondent for the sale of land to him as authorized by the *Soldier's Settlement Act*. Between going into occupation under the agreement

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\*PRESENT: Anglin C.J.C. and Duff, Lamont, Smith and Cannon JJ.

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in August, 1919, and determination on the part of the Board to rescind the agreement in April, 1929, the respondent defaulted in payments and neglected proper husbandry of the property. The agreement was rescinded by resolution of the Board on the 8th of August, 1929. The respondent brought an action, by petition of right, to recover the land and chattels of which he had been dispossessed and for damages for depreciation of the same. The Exchequer Court of Canada held that the respondent was not entitled to have the land or chattels returned to him; but that the notice of intention to rescind the agreement had not been given by the Crown sufficiently early to deprive the respondent of damages to be ascertained by the Registrar of that court upon a reference.

*Held* that, under the circumstances of this case, the respondent has established no actionable claim as against the Crown and that the *Soldier's Settlement Act* fully authorized the proceedings taken by it.

*Held* also, *per* Duff, Lamont, Smith and Cannon JJ. that, by the effect of section 31 of the *Soldier's Settlement Act*, the purchaser who is let into possession becomes tenant at will, and, in respect of possession of the land, has no greater interest than such a purchaser would have had at common law before the Judicature Acts.

*Semble, per* Duff, Lamont, Smith and Cannon JJ., that the reciprocal rights of the parties are by no means to be ascertained (in their entirety) by reference to the equitable principles governing the rights of vendor and purchaser, but chiefly by reference to the provisions of the statute, and especially to section 22.

Judgment of the Exchequer Court of Canada, ([1932] Ex. C. 18) rev.

APPEAL from the decision of the Exchequer Court of Canada (1), dismissing an action by the respondent to recover from the Crown certain lands and chattels of which he had been dispossessed but declaring that he was entitled to damages which were to be ascertained by the Registrar on a reference.

The material facts of the case are fully stated in the reasons for judgment given by the President of the Exchequer Court (1).

*W. N. Tilley K.C.* and *E. Miall* for the appellant.

*E. F. Newcombe K.C.* for the respondent.

ANGLIN C.J.C.—I concur in the result of the judgment in this case. I am entirely satisfied that the Crown was right in its contention that, under the circumstances, the statute fully authorized the proceedings taken by it herein.

The judgments of Duff, Lamont, Smith and Cannon JJ. were delivered by

DUFF J.—The argument on behalf of the Crown has convinced me—contrary to the view I had formed on reading the case—that the respondent has established no actionable claim as against the Crown.

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The appeal turns upon several sections of the *Soldier's Settlement Act*, the principal of which are sections 22 and 31. My view is that by the effect of section 31, the purchaser who is let into possession becomes tenant at will, and, in respect of possession of the land, has no greater interest than such a purchaser would have had at common law before the Judicature Acts. As to the respective interests of the parties in the land, that does not really come into question here, but I strongly incline to the view that the reciprocal rights of the parties are by no means to be ascertained (in their entirety), by reference to the equitable principles governing the rights of vendor and purchaser, but chiefly by reference to the provisions of the statute, and especially to section 22.

The Act requires that the terms of the sale shall be set forth in writing, and the agreement before us declares that the provisions of the statute are part of its terms. I regret that this sort of referential declaration should be resorted to. It seems to me that a more satisfactory method would be to state in as simple language as possible what the terms are, and to declare plainly and unequivocally that the contract is such as there set forth. In so far as it is intended to supersede equitable doctrines and to substitute therefor explicit statutory declarations, and especially when it is intended to revive common law doctrines and rules now in practice obsolete, that also should be made manifest.

But I cannot perceive that the form of the contract is characterized by any inconsistency with the statute of such a nature as to strike at its validity or effectiveness.

The terms of the statute in this view may, at first sight, appear needlessly oppressive. But when one considers the scheme of the Act, as a whole, one sees that the primary purpose of it is to assist and encourage agricultural settlement by former soldiers. The advancement of this purpose is entrusted to the Board, the appellant on this appeal. The main preoccupation of the Board, within the limits laid down in the statute, is to carry out this object and policy. The provisions of section 22 might appear in a first reading

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and without reference to this policy, to be somewhat arbitrary. But I have no doubt that the framing of these provisions was inspired by the view that the welfare of the deserving settler would be safer in the hands of the Board than if placed exclusively under the protection of a body of legal rules.

The appeal is allowed and the petition dismissed. The Crown's motion for leave is granted, and as terms, the Crown will pay all costs, including the costs of the motions.

*Appeal allowed.*

Solicitor for the appellant: *W. Stuart Edwards.*

Solicitor for the respondent: *H. Mason Drost.*

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