

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
McGregor v. The Esquimalt and Nanaimo  
Railway Company, from the Supreme Court  
of British Columbia; delivered the 22nd July  
1907.*

---

Present at the Hearing :

LORD ROBERTSON.

LORD COLLINS.

SIR ARTHUR WILSON.

SIR HENRI ELZÉAR TASCHEREAU.

SIR ALFRED WILLS.

[*Delivered by Sir Henri Elzéar Taschereau.*]

This is an Appeal from the Supreme Court of British Columbia.

The Respondents, a Company incorporated by an Act of the Legislature of the Province of British Columbia, claimed by their action the title to a certain lot of land in that Province, including all mines and minerals therein and thereunder, under a grant to them in 1887 by the Dominion Government. The Appellant, in answer to the action, claimed the title to this same lot in fee simple in virtue of a grant to him, in 1904, by the British Columbia Government, issued under the provisions of an Act of the Legislature of the Province entitled "The Vancouver Island Settlers' Rights Act, 1904."

The only controversy between the parties is as to the right to the mines and minerals in the said lot. The Respondents, in their statement of claim, admit the Appellant's right to a conveyance of the surface rights thereof.

The salient facts of the case, as far as necessary for the solution of the controversy

between the parties in the view their Lordships take of it, may be summarised as follows :—

On the 19th December 1883, the British Columbia Legislature passed an Act (47 Vict. c. 14) granting to the Dominion Government in aid of the construction of the Respondents' railway a certain area of land embracing the lot in dispute between the parties.

On the 21st April 1887, the Dominion Government, under the provisions of an Act of Parliament passed in April 1884, granted the said land to the Respondents (with certain reservations as to surface rights which, as previously stated, are not in question here).

The Appellant's contention is that this grant by the Dominion Government to the Respondents must be deemed to have been cancelled by the aforesaid grant to him by the British Columbia Government. The Respondents, on the other hand, contend that the grant to the Appellant did not divest them of their title to the property.

The action was tried by Mr. Justice Martin, who upheld the Appellant's contentions and dismissed the Respondents' action. On appeal, the Full Court reversed Mr. Justice Martin's decision and maintained the action on the exclusive ground that the British Columbia Act of 1904 did not authorize the grant of the said lot to the Appellant, and, consequently, that the said lot, notwithstanding the said grant, remained the property of the Respondents under the grant to them by the Dominion Government. The Appellant has to concede that, but for the British Columbia Act of 1904 and the grant to him under its provisions, the Respondents' title to the mines and minerals in question would be incontrovertible, so that the only questions for determination on this appeal are, first, did the Act of 1904

and the grant to the Appellant under its provisions have the effect of superseding the Respondents' title under the grant to them by the Dominion and legalizing the grant to the Appellant? and, secondly, if so, had the British Columbia Legislature the power to enact it?

These two questions their Lordships answer in the affirmative.

First, as to the true construction of the Act. On that point, it seems to their Lordships unquestionable that the Act would be altogether abortive and meaningless if the view taken of it by the Supreme Court of British Columbia were to prevail. That the word "settler" in the Act includes the Appellant, as held by the trial Judge, has not been questioned by the learned Judges in the Full Court, and that the lot in dispute is in the railway belt therein mentioned is not controverted. The reasoning upon which the learned Judges upheld the Respondents' contentions is summed up by the Chief Justice for the Court in the following words:—

"There is nothing in the operative clauses of the Act (section 3), which in terms purports to declare the title in the land to be in the Crown or attempts to deprive the company of any interest vested in it under its patent from the Dominion, and we must, of course, impute a rational and beneficial intention to the Legislature rather than an irrational and injurious intention."

Their Lordships cannot concur in that opinion. It seems clear to them that the true construction of that clause is that it imposes upon the Crown the obligation—and does not merely confer the power—of issuing a grant to certain of the settlers therein mentioned, of whom the Appellant is one. It reads as follows:—

"Upon application being made to the Lieutenant-Governor in Council, within 12 months from the coming into force of this Act, showing that any settler occupied or improved land within said railway belt prior to the enactment of chapter 14 of 47 Victoria (1883), with the bonâ fide intention of living on the

said land, accompanied by reasonable proof of such occupation or improvement and intention, a Crown grant of the fee simple in such land shall be issued to him or his legal representative free of charge and in accordance with the provisions of the Land Act in force at the time when said land was first so occupied or improved by said settler."

In their Lordships' opinion this enactment, in a remedial Act, read with the other parts of it, means clearly that a grant in fee simple, without any reservations as to mines and minerals, of any of the land therein mentioned (including the lot in question), if applied for within 12 months (as was done by the Appellant), should be issued to the settlers therein mentioned (including the Appellant as to the particular lot in dispute), though previously such a grant could not legally have been issued, because the said land had already been granted with its mines and minerals to the Dominion Government by the Provincial Act of 1883, and, subsequently, by the Dominion Government to the Respondents. If the Act of 1904 did not apply to this lot, amongst others, because the title to it was then vested in the Respondents, it would have no possible application at all. Such a construction would defeat the clear intention of the Legislature.

On the constitutionality of the Act of 1904 and the power of the British Columbia Legislature to enact it, their Lordships see no reason for doubt. The Legislature had the exclusive right to so amend or repeal in whole or in part its own said Statute of December 1883 (47 Vict. c. 14). And the Act relates, not to public property of the Dominion, as contended for by the Respondents, but to property and civil rights in the Province, and affects a work and undertaking purely local (section 92, sub-section 10, of the British North America Act). This railway is the property of the Respondents,

and the said land had ceased to be the property of the Dominion in 1887 by the grant thereof to the Respondents. By an Act passed in 1905 by the Dominion Parliament the legislative power over the Company has since been transferred to the Federal authority, but that Act, of course, has no application to this case.

Their Lordships will humbly advise His Majesty that the Appeal ought to be allowed; that the judgment of the Supreme Court of the 31st July 1906 ought to be reversed with costs to be paid by the Railway Company, and the judgment of Mr. Justice Martin, dismissing the action with costs, restored.

The Respondents will pay to the Appellant the costs of this Appeal.

