

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Martha Suzanna Wyatt and others v. The Attorney-General of the Province of Quebec, from the Supreme Court of Canada ; delivered the 13th June 1911.

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD MERSEY.

LORD ROBSON.

SIR ARTHUR WILSON.

[DELIVERED BY LORD MACNAGHTEN.]

This is an Appeal from the unanimous judgment of the Supreme Court of Canada reversing a judgment of the Court of King's Bench in Quebec and restoring that of the Superior Court.

The question relates to the right of fishing in a stretch of the river Moisie, some six miles long, lying below the first rapids met with in going up the river. The Moisie is a large river about two hundred miles in length. The first rapids are about 17 miles from its mouth. They are known as the Grand Portage.

The proceedings in this action were commenced by an Information filed on behalf of the Crown by the Attorney-General of the Province of Quebec complaining of the late Defendant Fraser and his co-Defendant Adams. Under letters patent granted in 1883 Fraser became the

proprietor of narrow belts of land on both sides of the river. The Respondent Adams was his lessee. Fraser and Adams claimed to be entitled to the exclusive right of fishing in the river opposite Fraser's lands. The Information prayed for a declaration that the river opposite those lands was a public, navigable, and floatable river, forming part of the dependency of the Crown Domain in the Province of Quebec, and that the right of fishing was exclusively vested in the Crown in right of the Province of Quebec and in the Crown's lessees. The Information concluded by asking for an injunction in accordance with that declaration.

The Defendant Fraser, on the other hand, by his plea claimed to have the exclusive right of fishing opposite to his lands. He alleged that for years before and after the date of the letters patent the Government of Quebec, by the acts and letters of its ministers and officials, recognised such rights. He asserted, moreover, that the river was neither navigable nor floatable, and that consequently the riparian proprietors were owners of the stream and the right of fishing in it.

The Attorney-General demurred to so much of the Defendant's plea as alleged facts tending to vary or supplement the letters patent under which Fraser claimed. The demurrer was sustained in the Superior Court; but it was overruled on appeal by an order of the Court of King's Bench on the ground that the allegations in question were relevant and contained facts tending to support the pretensions of the Defendants that the grant from the Crown included the right of fishing in the river opposite the lands granted. From that order there was no appeal. Evidence was then gone into at great length. The trial Judge held (1) that the negotiations between Fraser and his associates on the one hand, and the Department of Crown

Lands on the other, did not disclose an intention on the part of the Crown to convey to the Applicants anything more than the lands described in the letters patent, and (2) that the river Moisie from the Grand Portage to its mouth was a public, navigable, and floatable river.

In the Court of King's Bench this judgment was reversed on the ground that, prior to the issue of the letters patent in 1883, there was a concluded agreement between the Applicants and the Crown to the effect that in addition to the land which was the subject of the grant, the grantees should have the right of fishing in the river opposite.

The Court of King's Bench did not pronounce any decision as to the navigability of the River Moisie at the place in question.

The avowed object of Fraser and his associates in applying for grants of land along the banks of the Moisie was to secure the right of fishing in the river. The Government of Quebec, however, was not asked to grant any rights of fishing with the lands which were the subject of the application. At the same time it cannot be disputed that, from the date of the letters patent until recent times, it was considered even by officials of the Quebec Government, that the right of fishing in the river opposite to the lands granted to Fraser and his associates did belong to the Applicants and to Fraser as their representative and successor in title; and undoubtedly such right was exercised by them and by him continuously without hindrance or interference. Beyond this the evidence does not go. There is no suggestion of encouragement on the one hand, or of expenditure of money on the other, such as might possibly raise an equity against the real owner if the controversy were between private persons. On the contrary, it appears that for many years

Fraser and his predecessors in title derived a large revenue from the fishing without any expenditure of money beyond the comparatively trifling sum paid as the consideration for the land grants.

The attitude of the parties is probably explained by the fact that at the time when the applicants were in negotiation with the Quebec Government it was a moot point whether rivers which were Crown property belonged to the Crown in right of the Dominion or in right of the Province. That question, which was one of considerable difficulty under the peculiar wording of Schedule III. of the British North America Act of 1867, was not finally settled until the year 1898, when it was held by this Board affirming the Supreme Court that under the words "rivers" and "lake improvements," in Schedule III., rivers, apart from improvements, were not vested in the Crown in right of the Dominion, but remained vested in the Crown in right of the Province.

It was, moreover, supposed or taken for granted that the river Moisie was not a navigable or floatable river.

The matter has been dealt with so fully and so satisfactorily in the judgment of the Supreme Court, delivered by Girouard, J., that it is unnecessary for their Lordships to go through the facts of the case. They cannot do better than repeat the concluding words of the judgment.

"Summarised," says the learned Judge, "our holdings are"—

"That the patent issued by the Crown is plain and unambiguous in its language; that the rights of the parties must be determined by it, and cannot be added to, altered, or diminished by any previous negotiations written or oral leading up to its issue; that therefore the application of the patentee and subsequent correspondence between him and the Crown officials should not have been received in evidence for the purpose of explaining the

“ patent, and, if looked at for the purpose of establishing an
 “ independent or collateral contract conferring additional
 “ rights upon the patentee, entirely failed to do so ; that
 “ the legal effect of the language of the patent with respect
 “ to the bed of the river and the fishing rights therein
 “ depends upon the determination of the question whether
 “ the Moisie at and in the four or five of its miles covered
 “ by the patent is navigable or floatable within the meaning
 “ of the law of Quebec, and that, adopting the test of navi-
 “ gability laid down by the Privy Council we
 “ concur with the findings of the trial Judge, and which
 “ findings are not questioned in the judgment of the Court
 “ of Appeal that such river at such locality and from thence
 “ to its mouth is so navigable and floatable.”

The matter, as the learned Judge points out, must depend ultimately upon the question of the navigability of the river Moisie. It may be, as contended by the learned Counsel for the Appellants, that the evidence in favour of navigability is not so clear or so strong as the learned trial judge considered it to be. But still in the opinion of their Lordships there is sufficient evidence to support his finding ; and this is not a case in which their Lordships would lightly dissent from the concurrent findings of the trial Judge and the Supreme Court of Canada.

It may perhaps seem hard, as urged by the learned Counsel for the Appellants, that persons should be deprived of so valuable a property after enjoyment so long continued. But it must be borne in mind that when the advisers of the Crown sought to establish the right of the Government of Quebec they were met not by an appeal for favourable consideration but by a claim of adverse right which left them no alternative but to institute hostile proceedings by way of ejectment.

Their Lordships will humbly advise His Majesty that the Appeal ought to be dismissed.

The Appellants will pay the costs of the Appeal.

In the Privy Council.

MARTHA SUZANNA WYATT AND
OTHERS

v.

THE ATTORNEY-GENERAL OF THE
PROVINCE OF QUEBEC.

LONDON :

PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1911.