

Privy Council Appeal No. 69 of 1919.

Angus G. Creelman and another - - - - - *Appellants*

v.

The Hudson Bay Insurance Company - - - - - *Respondents.*

FROM

THE COURT OF APPEAL FOR BRITISH COLUMBIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 27TH JUNE, 1919.

Present at the Hearing :

LORD BUCKMASTER.

LORD PARMOOR.

LORD WRENBURY.

[*Delivered by* LORD BUCKMASTER.]

On the 30th December, 1911, the appellants entered into an agreement to buy from the respondents certain land in Vancouver. The agreement is said to be antedated, but into this and the other circumstances which led to the agreement being made their Lordships do not think it is necessary to enquire. The terms of the agreement provided for payment of the purchase price in certain instalments, and threw upon the appellants the duty of discharging an existing mortgage upon the property. Default was made by the appellants in their obligations, and the proceedings out of which this appeal has arisen were taken by the respondents against them for the purpose of obtaining the relief to which they were entitled by the terms of their bargain. Mr. Justice Morrison, before whom the case was heard, dismissed the action, but his judgment was reversed by the Court of Appeal of British Columbia, who gave judgment in favour of the respondents. As to the form of that judgment no complaint is made. The complaint is against the substance, upon the ground

that the respondents in fact had no title whatever to dispose of this land, and that the contract which they sought to enforce was null and void and incapable of being made the subject of legal proceedings. That contention depends upon these circumstances:—The respondents are a Company incorporated by a Dominion Statute of 1910, and their powers of holding and disposing of real estate are subject to restrictions and limitations imposed by section 14 of that Statute, which is in these terms:—

“The new Company may acquire, hold, convey, mortgage, lease, or otherwise dispose of any real property, required in part, or wholly, for the purposes, use, or occupation of the new Company, but the annual value of such property held in any Province of Canada shall not exceed \$5,000, except in the Province of British Columbia, where it shall not exceed \$10,000.”

It is not suggested that the property acquired by the Company in this case exceeded in annual value the sum of \$10,000. It is said that it was not in fact acquired wholly or in part for the purposes of the use or occupation of the Company, and that therefore they had no power to hold or to dispose of it. Their Lordships do not propose to consider whether or no the circumstances in which this property was acquired were circumstances which would justify this contention, but upon the assumption that the property was not so acquired the appellants are still faced with this difficulty:—There is a Statute of the Province of British Columbia which regulates the registration of title of property bought and sold within its territory, and that Statute provides that where registration takes place a certificate shall be issued, and that a certificate of indefeasible title issued under the Statute shall so long as the same remains in force and uncanceled be conclusive evidence at law and in equity as against His Majesty and all persons whomsoever that the person named in such certificate is seized of an estate in fee simple in the land therein described against the world, subject to certain reservations and exceptions which are not material for the purposes of the present case. Such a certificate of registration was obtained by the respondent Company on the 5th February, 1913, and the appellants, realising that on the words of the section they are unable to dispute the title which the certificate confers, attempt to escape from the difficulty by asserting that the circumstances render such certificate wholly void. They assert that the fact that the land was not acquired for the purposes of the Company prevents the Company being registered, and that as they are unable to be registered, it is impossible that the certificate can grant any title. The appellants further contend that unless this view be accepted, it would necessarily follow that by means of this Registration Act it would be possible for a Provincial Statute to defeat and override Dominion legislation. Their Lordships are unable to accede to either of these propositions. In their opinion the certificate of title referred to in section 22 of the Land Registry Act is a certificate which, while it remains unaltered or unchallenged upon the register, is one which every purchaser is bound to accept. And to enable an investigation

to take place as to the right of the person to appear upon the register when he holds the certificate which is the evidence of his title, would be to defeat the very purpose and object of the Statute of Registration. Nor, in their Lordships' opinion, will the rights of the Dominion Legislature be in any way interfered with by this conclusion. It is impossible to assume that the officer in charge of the registration will not do his duty in investigating titles before he issues the certificate, and if in this case the certificate was issued inadvertently it would still have been competent for the Attorney-General of the Dominion, while the Company remained upon the register, to have taken steps, had he thought fit, to have had the register rectified. It might also have been competent for a shareholder of the Company to take similar proceedings, but upon this it is unnecessary for their Lordships to express any decided opinion. The register remains unaltered and unchallenged, and the only question for decision now is as to the effect of the certificate which the Company have held from the 5th February, 1913, down to the present time. In their Lordships' opinion, the appellants are bound to accept that certificate, and consequently to comply with all their obligations under the contract. Their Lordships agree with the view expressed by Mr. Justice McPhillips that it appears to be beyond all controversy that the appellants can have conveyed to them an absolutely indefeasible title to the land which they have contracted to purchase, and they are unable to see why the learned Judge expressed any hesitation as to the necessary consequences following from that clear and definite statement of opinion.

For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.



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v.

THE HUDSON BAY INSURANCE COMPANY.



DELIVERED BY LORD BUCKMASTER.