

BETWEEN:

WILFRED ALAN WALKER and  
M. E. CLARK & SON LTD. . .

SUPLIANTS;

AND

HER MAJESTY THE QUEEN . . . . .RESPONDENT.

Edmonton  
1968  
Nov. 19-20  
Ottawa  
1968  
Dec. 18

*Petitions of right—Renewal clauses in leases of certain Crown lands—National Parks Act, S. of C. 1930, c. 33 (now R.S.C. 1952, c. 189)—42 years term of leases—1909 Regulations re-established by Order in Council P.C. 1336, June 6th, 1911, under Section 18(2) of the Dominion Forest Reserves and Parks Act, S. of C. 1911, c. 10—Saving provisions of section 36(c) of the Interpretation Act, S. of C. 1967-68, c. 7.*

The issue was the enforceability of an alleged perpetual renewal clause in each of two leases held by the suppliants in respect to certain lands situated in Jasper National Park, Alberta.

*Held:* 1. That the applicable regulations under which these leases were originally granted were the 1909 Regulations as re-established by the Governor in Council by Order in Council P.C. 1336, dated June 6th, 1911, made under section 18(2) of the *Dominion Forest Reserves and Parks Act*, S. of C., 1911 c. 10.

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2. That the intention to covenant for perpetual renewal is unequivocally expressed in the renewal clauses in the subject leases, and also that there is no equivocation in the language employed in these relevant regulations and that those regulations gave the designated Minister, at this time, the power to grant leases containing a covenant giving the right of renewal in perpetuity; and that certain words contained in these covenants for renewal which the Minister had no power to insert at the time, are severable from the other clauses and can be disregarded, leaving the rest of the renewal clauses unaffected.
3. That the Parliament of Canada has not taken away the right of renewal contained in the subject leases by subsequent legislation and regulations in force now, because of the saving provisions of section 36(c) of the *Interpretation Act*, S. of C. 1967, c. 7.
4. That the fifth covenant of the two leases does not make applicable all Regulations in force at the original date of the subject leases or which were made thereafter in that behalf by the Governor in Council but instead the two leases are subject only to those Regulations which are in the nature of police regulations by reason of such fifth covenant in these leases.
5. That the Alberta *Land Titles Act* has no application to the issues herein;
6. That judgment go declaring that the suppliants are entitled to the relief sought by the petitions of right together with costs.

PETITIONS OF RIGHT tried on common evidence.

*George H. Steer, W. C. and W. K. J. Mis* for suppliants.

*P. M. Troop* for respondent.

GIBSON J.:—These two actions commenced by petitions of right were tried together on common evidence.

The issue in both is the enforceability of renewal clauses in each of two leases of certain lands situated in Jasper National Park, Alberta.

Presently, Jasper National Park is one of the National Parks of Canada constituted by the *National Parks Act*, Statutes of Canada 1930, chapter 33 (now Revised Statutes of Canada 1952, chapter 189).

The leases are from the respondent and are dated respectively October 1, 1924 (of the suppliant Walker) and October 1, 1925 (of the suppliant Clark). The renewal clauses are contained in the last two paragraphs of these leases and are identical in wording. The original term of each of these leases was 42 years and has expired. And each suppliant applied for a renewal of lease in accordance with these renewal clauses and was refused.

In the prayer for relief of these petitions of right the suppliants claim a declaration that they are entitled to renewal:

for a further term of 42 years, commencing on October 1, 1966 and on October 1, 1967 respectively, containing all of the clauses in his or its original lease including the said clauses referred to in paragraphs 9 and 10, and 7 and 8, of their respective petitions, except as to rent to be paid, and that upon continuing to comply with the stipulations, terms and conditions of the said Indenture and upon paying the rent lawfully fixed from time to time, to successive renewals of the said term of 42 years forever.

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The said renewal clauses read as follows:

AND it is hereby agreed by and between the parties to these presents that if at the expiration of the said term of forty-two years the lessee shall be desirous of taking a renewal lease of the said demised premises, and shall of such desire prior to such expiration give to the Minister six months' notice in writing, and shall have paid the rent hereby reserved, and observed, performed fulfilled and abided by the stipulations, terms and conditions herein expressed and contained and on her part, to be observed, performed, fulfilled and abided by, then His Majesty, His successors or assigns shall and will grant unto the lessee the said demised premises for a second term of forty-two years, by a lease containing the like stipulations, terms and conditions as are in these presents expressed and contained, except as to the rent to be paid by the lessee during such second term, and that the amount of such rent, in case His Majesty, His successors or assigns, and the lessee shall fail to agree thereupon shall be fixed and determined by the award and arbitrament of three arbitrators, one of whom shall be named by the Minister, another by the lessee, and the third by the two so named, and said arbitrators in fixing the amount of such rent shall calculate the same altogether as ground rent of a parcel of land situated as the said premises shall then be situated, and the value of any buildings, tenements, houses or erections placed thereon by the lessee shall not be taken into account in fixing such rent; and the rent so to be fixed and determined shall be payable half-yearly as is hereinbefore provided with respect to the rent reserved under these presents, and shall commence immediately upon the termination of the term hereby granted.

AND it is further agreed that if at the expiration of such second term the lessee shall be desirous of again renewing such lease, and shall give to the Minister the like notice as is hereinbefore provided with respect to the first renewal thereof, and shall have paid the rent, and observed, performed, fulfilled and abided by the stipulations, terms and conditions in the first renewal lease expressed and contained, then His Majesty, His successors or assigns shall and will grant a further renewal lease to the lessee for a further term of forty-two years, subject to the like stipulations, terms and conditions, as are hereinbefore provided with respect to such first renewal lease, the amount of rent to be payable under such second renewal lease to be fixed and determined in the manner above provided and set forth; and so on at the end of every renewal term; it being the true intent and meaning of these presents that

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at the end of the hereby granted term of forty-two years and also at the end of every renewal term of forty-two years, so to be granted as aforesaid, and upon the observance and fulfilment of, and compliance with the like requirements as are hereinbefore provided with respect to such first and second renewals, there shall be granted a further renewal term or lease of the said demised premises, containing the like stipulations, terms and conditions, and at a rent fixed and determined, as are hereinbefore respectively provided, and so on forever.

The lease of the suppliant Walker is of a cottage lot outside the townsite in Jasper National Park in a subdivision of Villa lots called Lake Edith Subdivision. His predecessor in title made application to lease these lands in this National (Dominion) Park of Canada and pursuant to the then relevant Regulations, after filing building plans and specifications with the Superintendent of the Park obtained a building permit and subsequently complying with the building requirements, built the cottage premises.

The lease of the suppliant Clark is of a commercial building lot in the townsite of Jasper National Park. The predecessor in title to Clark also made formal application to lease these lands in this National (Dominion) Park of Canada, filed building plans and specifications with the Superintendent of the Park pursuant to the then relevant Regulations, obtained a building permit and subsequently complying with the building requirements, built the commercial premises.

The term of the lease of the suppliant Walker expired on September 30, 1966 and as of that date this suppliant and his predecessors in title had paid the rent reserved, had performed, fulfilled and abided by the stipulations, terms and conditions expressed and contained in the lease and the suppliant Walker had, pursuant to the term of the lease on March 7, 1966, given six months' notice to the respondent of his desire to obtain a renewal of lease pursuant to the renewal clauses of the lease quoted above. The respondent did not grant and has not granted this suppliant a renewal of his said lease containing these two said renewal clauses above quoted, but instead tendered to him a lease of the said lands for a further term of 42 years commencing October 1, 1966, with no right therein of further renewal. This suppliant refused to accept the lease tendered to him by the respondent.

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The term of the lease of the suppliant Clark expired on September 30, 1967, and, in like manner, as of that date the suppliant company and its predecessors in title had paid the rent reserved, had performed, fulfilled and provided by the stipulations, terms and conditions expressed and contained in the lease and this suppliant had, pursuant to the term of the lease on January 24, 1967, given to the respondent at least six months' notice in writing of its desire to obtain a renewal of the lease containing the said two last clauses of renewal above quoted. The respondent in this case also did not grant and has not granted to this suppliant company a renewal of the lease containing these said two last clauses of renewal above quoted, but instead tendered to it on September 30, 1966 a new lease for a further term of 42 years, with no right therein of further renewal. The suppliant company refused to accept this lease offered to it by the respondent.

After such refusals, the Superintendent of Jasper National Park informed each suppliant that he considered each to be an overholding tenant. The Superintendent did this by way of letter addressed respectively to each of the suppliants.

The suppliants then commenced these actions against the respondent.

For the purpose of adjudicating the issues in these actions, a determinative fact is that the lands described in each of these leases are located in one of the National Parks owned by Canada.

Since their first establishment, the National Parks of Canada have been the subject of considerable legislation by the Government of Canada and also a good deal of Regulations by Order in Council have been made under such legislation.

The substance of the adjudication in these actions, in brief, is the contractual lease rights of the suppliants under their said respective lease documents at the present time under and by reason of such legislation and Regulations.

A list of this legislation and Regulations is set out in Appendix "A" to these Reasons.

From this list, it will be noted that the first statute relevant to National Parks was *The Dominion Lands Act*,

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R.S.C., 1886, c. 45. This Act related to all lands in what is now Manitoba, Saskatchewan, Alberta and the territories owned by Canada.

From the lands described in that Act, then firstly there was carved out the Rocky Mountains Park (now Banff Park). This was done by the *Rocky Mountains Park Act*, S. of C. 1887, c. 32.

Then in 1906, there was next carved from the lands described in *The Dominion Lands Act*, the Dominion Forest Reserves. This was done by *The Dominion Forest Reserves Act*, S. of C. 1906, c. 14.

Then in 1911, there was carved from the Dominion Reserves, further Dominion Parks. This was done by *The Dominion Forest Reserves and Parks Act*, S. of C. 1911, c. 10 and Regulations made thereunder.

This latter Act also consolidated into one statute *The Dominion Forest Reserves Act*, relating (as stated) to "Forest Reserves" and the *Rocky Mountains Park Act* relating to "National Parks".

So, putting it another way, originally the "Forest Reserves" and "National Parks" were dealt with in separate statutes until 1911. The Parks were first dealt with by the *Rocky Mountains Park Act*, S. of C. 1887, c. 32 and the Forest Reserves were first dealt with by *The Dominion Forest Reserves Act*, S. of C. 1906, c. 14. Then in 1911, these two Acts were repealed and from that date until 1930, "Forest Reserves" and "National Parks" were dealt with by one Act, *The Dominion Forest Reserves and Parks Act*, S. of C. 1911, c. 10.

In 1930, by the Imperial Statute 21 Geo. V, c. 26, the *British North America Act, 1930*, the "Forest Reserves" (*inter alia*) owned by Canada situated in the Province of Alberta, were transferred to the Province of Alberta, but the Government of Canada for Canada retained ownership of the "National Parks", the Indian lands, veterans' lands and other lands and things, all of which is spelled out in that statute and the agreements forming part of it.

Going back and recapitulating, as of 1906 the three relevant Federal statutes then in force, (which were carried into the R.S.C. in 1906) were:

- *The Dominion Lands Act*, R.S.C. 1906, c. 55 (applicable to Manitoba, Saskatchewan, Alberta and the Territories of Canada).

- *The Dominion Forest Reserves Act*, c. 56.
- *The Rocky Mountains Park Act*, c. 60.

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Then in 1911 by S. of C., c. 10, *The Dominion Forest Reserves and Parks Act* was passed.

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This latter Act dealt with two separate and distinct matters, namely, firstly, with “Forest Reserves” and secondly with “National Parks” (or “Dominion Parks” as they were then called).

The scheme of this Act was as follows:

- (i) that all the lands mentioned in the schedule to the Act were withdrawn from sale and no Dominion lands within the boundaries set forth in the schedule “shall be sold, leased or otherwise disposed of or be located or settled upon and no person shall use or occupy any part of such lands, except under the authority of the Act or of the Regulations made thereunder;”
- (ii) that out of the lands set forth in the schedule, the Governor in Council under section 18 of the Act could from time to time “designate such reserves or areas within the forest reserves as he thought fit, to be and be known as Dominion Parks” and subject to the provisions of the Act, those parks were to be maintained and be made use of as public parks and pleasure grounds for the benefit, advantage and enjoyment of the people of Canada;
- (iii) that under subsection (2) of section 18 of the Act, the Governor in Council was empowered to make Regulations with respect to the Dominion Parks; and
- (iv) that under section 17 of the Act, the Governor in Council could make regulations for:
  - (a) the protection, care and management of reserves;
  - (b) the cutting and removal of timber, the working of mines, quarries and mineral deposits, the removal of sand, gravel, earth, stone or any other material, the pasturage of cattle, the use of hay lands, the establishment and use of reservoirs, water-power sites, power transmission lines, telegraph and telephone lines, and the granting of leases and permits therefor;
  - (c) the preservation of game, birds, fish and other animals, and the destruction of noxious, dangerous and destructive animals;
  - (d) the prevention and extinguishment of fire;
  - (e) the prevention of unauthorized business and traffic;

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- (f) the removal and exclusion of undesirable persons and trespassers, and of persons making any unauthorized use of any reserve, or failing to comply with any regulation;
- (g) the confiscation and disposal of things seized;
- (h) all purposes necessary to carry this Act into effect according to its true intent and meaning.

It should be noted that Regulations made under section 18 of this Act were to apply to "National (Dominion) Parks" while Regulations made under section 17 of this Act were to apply to "Forest Reserves".

Regulations under both sections 17 and 18 of this Act were made and were in effect at all relevant times.

At all times, the Regulations dealing with "Forest Reserves" were different from the Regulations dealing with "National (Dominion) Parks". A consideration of the history of the "National (Dominion) Parks" Regulations demonstrates that the Regulations relating to "Forest Reserves" never did apply to "National (Dominion) Parks".

The history of the "National (Dominion) Parks" Regulations is as follows:

- (i) in 1889, by Order in Council P.C. 1350, the Governor in Council made the first set of Regulations for the control and management of the Rocky Mountains Park of Canada pursuant to section 4 of the *Rocky Mountains Park Act*. By section 13 of those Regulations, the Minister of the Interior had the power to cause certain portions of the park to be surveyed and laid out into building lots for the construction thereon of buildings for ordinary habitation and trade and industry and for the accommodations of persons resorting to the park and the power of lease given to the Minister of the Interior was prescribed in these words, *viz*: "may issue leases for such lots for any term, not exceeding 21 years at rentals to be from time to time fixed by him". By section 14 of those Regulations all leases of land within the park were subject to such Regulations;
- (ii) on June 30, 1890, the said Regulations made in 1889 were rescinded and new Regulations were enacted. Insofar as the leasing of land was concerned, the change was that the Minister of Interior was, by paragraph 14 of those Regulations, authorized to

issue leases for such lots for any term, not exceeding 42 years, with the right of renewal, with rentals to be from time to time fixed by him;

- (iii) the 1890 Regulations remained in force until 1909. On June 21, 1909 by Order in Council 1340, the Governor in Council made new Regulations to replace the 1890 Regulations. Whereas the 1890 Regulations only applied to the Rocky Mountains Park of Canada, these new Regulations were made to apply to that Park as well as to Yoho Park, Glacier Park, Jasper Park and Elk Island Park;
- (iv) on June 6, 1911, the Governor in Council by Order in Council P.C. 1336, re-established the said Regulations of the National Parks of Canada, made in 1909. (*The Dominion Forest Reserves and Parks Act* came into force on May 19, 1911.)
- (v) (an amending Act, S. of C. 1913, c. 18, amended section 18, but these latter Regulations were not changed then).

Instead, these latter Regulations remained in force until 1930. By virtue of section 9 of *The National Parks Act 1930*, these Regulations continued in force until repealed by Governor in Council. By Order in Council P.C. 1452 dated June 23, 1930, sections 2, 30, to 33 inclusive, and section 35 of the 1909 Regulations were rescinded and in respect of section 2 thereof the following Regulation was made and established to replace section 2:

The Minister of the Interior may cause such portions of the park as from time to time he may designate to be surveyed and laid out in building lots, for the purposes of residence and trade and may issue leases to such lots for any term not exceeding 42 years, at rentals to be from time to time fixed by him and may issue licences for lots outside the townsite only for the entertainment of persons visiting the parks.

- (vi) the 1909 General Regulations as amended in 1930 remained in force and effect, as amended, until 1947 when by Order in Council P.C. 5045 dated December 8, 1947 these Regulations were revoked and a new set of Regulations was made in place thereof entitled "General Regulations for the Control and Management of National Parks" and

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(vii) the 1947 Regulations remained in force and effect until 1954 when another set of Regulations made by Order in Council P.C. 1954-1918, on December 8, 1954 were passed which Regulations were also entitled "General Regulations for the Control and Management of National Parks". Then these Regulations were amended in 1962 to authorize the Minister to grant a lease for 42 years with an option for 21 years. These latter are the Regulations in force to-day.

So much for the history of the "National (Dominion) Parks" Regulations.

In 1923-1924 when the respective said subject leases of the suppliants were granted by the respondent, the Regulations in force firstly, respecting "National (Dominion) Parks" and, secondly, respecting "Forest Reserves" were as follows:

(i) Respecting "National (Dominion) Parks"

The June 21, 1909 Regulations made by Order in Council P.C. 1340, as re-established by Order in Council P.C. 1336 dated June 6, 1911, passed under the enabling authority of subsection 2 of section 18 of *The Dominion Forest Reserves and Parks Act 1911*.

(ii) Respecting "Forest Reserves"

The Regulations made by Order in Council P.C. 2028 dated August 8, 1913, (rescinding the Regulations of January 13, 1908 and October 19 (October 12) 1910) as further amended by Order in Council P.C. 2349 dated September 24, 1913 (which rescinded section 75 of the Regulations relating to Forest Reserves established by Order in Council of August 8, 1913 and substituted a new section 75).

So much for an outline of subject leases and relevant legislation and Regulations.

To determine the issues in both of these actions, it is necessary to resolve five questions, namely, firstly what were the applicable Regulations under which each of these subject leases was originally granted to the respective predecessors in title of the suppliants; secondly, whether the applicable Regulations authorized the designated Minister

at that time to grant leases of the respective lands described in these leases renewable in perpetuity; thirdly, whether the Parliament of Canada since the granting of the original leases and by the time in 1966 when the original term of 42 years in these leases had expired and the time for requesting the granting of renewals had come, has taken away the right to grant renewals in perpetuity if such right of renewal ever existed; fourthly, whether the fifth covenant in each of these leases makes applicable the present National Parks Regulations. The fifth paragraph of the leases read:

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That this lease and any renewal thereof, shall be subject to all Regulations for the control and management of Dominion Parks now in force, or which may hereafter be made from time to time in that behalf, by the Governor in Council;

and fifthly, whether the Alberta *Land Titles Act* has any application to the issues herein.

As to the first question, namely, what is the applicable Regulation under which these respective leases were originally granted, it is the submission of the suppliants that these leases were granted pursuant to the Regulations P.C. 2028 passed August 8, 1913 under the authority of the 1913 statute amendment to *The Dominion Forest Reserves and Parks Act*, c. 18, of the Statutes of Canada 1913 assented to June 6, 1913, referred to above. Specifically, the suppliants submit that sections 64 and 65 of Regulation numbered P.C. 2028 passed on August 8, 1913, were the relevant enabling authority under which the suppliant Walker's lease was originally granted, and that section 75 of the said Regulation as amended by Order in Council 2349 on September 24, 1913, referred to above, was the relevant enabling authority under which the suppliant Clark's lease was originally granted.

These Regulations read as follows:

64. The Minister is authorized to lease lands for the following purposes, and under the conditions hereinafter provided:

- (a) Surface rights for mining claims.
- (b) Schools, churches, club-houses, sanitarium and cemeteries.
- (c) Summer resort lots.

Conditions governing the leasing of lands for above purposes:

- (a) ...
- (b) ...
- (c) Leases for building lots within duly established summer resorts, on such form as is approved by the Minister, may be granted

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for a period of forty-two years renewable in like periods at a rental to be fixed by the Minister. Such rental shall be subject to readjustment in the year 1920 and at the end of each period of ten years thereafter.

Before a lease is issued in favour of any applicant he shall be required to execute an agreement by which he will undertake to erect and complete within one year to the satisfaction of the forest officer in charge of the reserve a building for residential purposes according to plans and specifications previously approved by the said forest officer, and on fulfilment of the terms of the agreement the lease shall be granted. No building shall be erected or used for other than residential purposes except by special authorization of the Minister.

(d) Leases shall not be transferable without the written consent of the Minister.

65. Permits for periods not exceeding one year for the construction of buildings, fences or other works or structure on forest reserves and the occupation of the lands necessary for any purpose authorized by the regulations may be granted by the Director or any other officer "acting under his instructions, subject to such terms and conditions as may be determined by the Minister. The Minister may in his discretion put the right up to tender."

75. The Minister may establish townsites in forest reserves in his discretion, may subdivide the townsites into lots and may lease the lots, fixing rentals and terms of payment, subject to the following conditions:—

- (a) The lease of each lot shall be subject to the lessee's entering into an agreement to erect within one year a building satisfactory to the forest officer in charge of the reserve, and no lease shall be issued until the terms of the agreement have been complied with. Agreements shall not be transferable. Failure to fulfil an agreement shall render it liable to cancellation.
- (b) If the townsite is being established in connection with mining or other industrial operations, the company carrying on such operations may be permitted by the Minister to lease such number of lots as may be necessary for the erection of buildings in connection with the operations, without restriction as to the buildings on individual lots.

The submission of the respondent on this question is that the said referred to 1913 Regulations passed pursuant to the 1913 amendment to *The Dominion Forest Reserves and Parks Act* were Regulations in respect to "Forest Reserves" only and were not Regulations which in any way related to "National (Dominion) Parks"; and further and instead that the Regulations with respect to "National (Dominion) Parks" which are relevant and were existing in 1923-1925 and were the authority under which both these subject leases were originally granted, were the said 1909 Regulations as re-established by the Governor in Council by Order

in Council P.C. 1336 dated June 6, 1911, made under section 18(2) of *The Dominion Forest Reserves and Parks Act*, S. of C. 1911, c. 10.

In my view, the submission of the respondent on this question is the correct statement of the applicable law.

As to the second question, namely, whether the applicable Regulations authorized the designated Minister at the time to grant the said leases renewable in perpetuity, it should be noted firstly, that there is no reason in law why a lease renewable in perpetuity cannot be granted if the words of the clauses giving the right to such renewal are clear and unequivocal. (See *Re Jackson v. Imperial Bank of Canada*<sup>1</sup>, Falconbridge C.J.; and cf. *Wilson v. Kerner*<sup>2</sup>, Teetzel J.; *Gooderham & Worts Ltd. v. Canadian Broadcasting Corp.*<sup>3</sup> Imp. P.C.); and secondly, that a covenant for perpetual renewal is not bad under the perpetuity rule (see *Shem Bridges v. John Hitchcock et al*<sup>4</sup>; *Woodall v. Clifton*<sup>5</sup>; *Rider v. Ford*<sup>6</sup>).

As to the wording in the renewal clauses in the subject leases, it is common ground and I agree that the intention to covenant for perpetual renewal is unequivocally expressed.

But there is a further problem. This further problem is whether or not there is any equivocation in the language employed in the Regulations which authorized the making of these leases, and if there is, do these Regulations also have to be in language unequivocally expressing the intention to give the power to grant a lease containing a covenant for perpetual renewal? In other words, does the rule of construction or interpretation applicable to covenants of perpetual renewal of a lease apply with equal force to the construction of a Regulation granting the power to make a lease containing such a covenant for renewal?

The relevant words from section 2 of the Regulations of the National Parks of Canada, 1909 P.C. 1340 as re-enacted 1911, P.C. No. 1340 prescribing the power under which the subject leases were granted containing the said covenant for

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<sup>1</sup> (1917) 39 O.L.R. 334.

<sup>3</sup> [1947] 1 D.L.R. 417 (Imp. P.C.).

<sup>5</sup> [1905] 2 Ch. Div. 257.

<sup>2</sup> (1911-12) 3 O.W.N. 769 at 770.

<sup>4</sup> (1715) 5 Bro. Parl. Cas. 6.

<sup>6</sup> [1923] 1 Ch. Div. 541.

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renewal clauses are: "for any term not exceeding 42 years, with the right of renewal, at rentals to be from time to time fixed by him".

Do these words give the power to grant the right of one renewal only, as submitted by the respondent or the right of renewal in perpetuity as submitted by the suppliants? In other words, for example, do these words mean the same as if they read "with the right of one renewal" or "with the right of a renewal"; or do these words means the same as if they read "with right of renewal"?

As to this, I am of opinion that there is no equivocation in the language employed in these relevant Regulations, and that they gave the designated Minister at this time the power to grant leases containing a covenant giving the right of renewal in perpetuity. As a consequence, it is not necessary to express an opinion as to whether the rule of construction or interpretation applicable to covenants for perpetual renewal of a lease apply with equal force to the construction of Regulations such as the subject Regulations granting the power to make a lease containing such covenants.

There is also another part, however, to this second question that also must be resolved. It has to do with severability.

As to this, the Minister of the Interior at the time had the power by the Regulations quoted above to renew "at rentals to be from time to time fixed by him".

In the first of the two covenants for renewal clauses in each of the subject leases (quoted above in full) there appear the words "except as to the rent to be paid by the lessee during such second term, and that the amount of such rent, in case His Majesty, His successors or assigns, and the lessee shall fail to agree thereupon, shall be fixed and determined by the award and arbitrament of three arbitrators, one of whom shall be named by the Minister, another by the lessee, and the third by the two so named, and said arbitrators in fixing the amount of such rent shall calculate the same altogether as ground rent..."

There clearly was no power given at the time to the Minister of the Interior by the words from the Regulations quoted above to insert the above quoted words in this covenant for renewal clause in each of the leases. The

Minister's power only was to insert a clause implementing the power given by the words reading "at rentals to be from time to time fixed by him".

These same comments apply to the appropriate words used in the second covenant for renewal clause concerning the fixation of the rentals.

The problem is—are these words severable from the clause (and the applicable words in the second clause also severable from the second clause) and can they be disregarded leaving the rest of this clause unaffected? Putting it another way, if these words are removed, is there a rent clause left?

Specifically, are the words "except as to the rent to be paid by the lessee during such second term" (which would be the relevant words left in the first clause if the offending words were deleted) sufficient to reserve to the Minister, as was his only power, the right to fix the rent; or is this clause deficient in that there is no reservation of fixation of rent to the Minister, and as a consequence, the clause fails *in toto*; that is, is what is left of this clause, after such severance, too vague and uncertain to be enforceable, and therefore void; or putting it in other words, since the Regulations made under section 18 of *The Dominion Forest Reserves and National Parks Act*, at the material time, required the Minister of the Interior to reserve to himself the power to fix the rent from time to time in the subject leases and in any renewals thereof, and since the covenants for renewal in both the subject leases do not reserve to the Minister the power to fix the rent from time to time, and if it is permissible and the offending words are severed from these clauses, does it follow, as a matter of law, that each of these subject leases lack one of the essential terms of an agreement to renew a lease namely, the rent to be paid, so that the agreements to renew contained in the said two covenants to renew clauses in each of the subject leases are too vague or uncertain to be specifically decreed?

As to this, I am of opinion firstly, that the offending words are severable from each of the renewal clauses and can be disregarded, leaving the rest of the clauses unaffected; and secondly, that, on the true interpretation, these clauses do reserve to the designated Minister the power to fix the rent from time to time in the way it

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always was intended. It was intended that the designated Minister fix the rent payable pursuant to leases renewed under such covenants to renew by way of a general Regulation applicable to all leases of the same category as the subject leases in National Parks and not by a series of single Regulations applicable only to each individual lease of lands in National Parks, and therefore the subject leases do not lack this essential term of an agreement to renew a lease, namely, the rent to be paid.

As to the third question, namely, whether or not the Parliament of Canada has taken away the right of renewal if such renewal existed, the submission of the respondent is that these covenants for renewal in the subject leases have always been subject to the infirmity that at the time these covenants became operative, there must be authority to grant a lease in the terms of the covenants; and that if such power did not exist at that time, then, the covenants are unenforceable. Putting it another way, the submission is that, such covenants are subject to the implied condition that at the time when the renewal leases are to be granted, the lessor has the legal power and authority to grant the leases in the terms of the covenants. For this submission the respondent relies on: *Gas Light and Coke Co. v. Towse*<sup>7</sup>; *Rayonier B.C. Ltd. v. City of New Westminster*<sup>8</sup> Tysoe J.; and *Mauray v. Durley Chine (Investments) Ltd.*<sup>9</sup>

It is clear that the Regulations in force now (which were the same as those in force at the expiry date of each of these leases, namely, 1966) as noted above, are different than the 1909 Regulations as re-enacted in 1911, under which the leases were originally granted; and that the Regulations in force now do not give the designated Minister the power to grant leases containing renewal clauses such as are in the subject leases.

In resolving this question, it is of relevant significance that the Imperial Statute of the *British North America Act 1930*, 21 Geo V, c. 26 above referred to, as Clause 1 reads:

1 The agreements set out in the Schedule to this Act are hereby confirmed and shall have the force of law notwithstanding

<sup>7</sup> (1887) 35 Ch. Div. 519.

<sup>8</sup> (1961-62) 36 WWR 433 (B.C.C.A.) at pp 441-42 and 444; (1962) 32 D.L.R. (2d) 596 (S.C.C.)

<sup>9</sup> [1953] 2 Q.B. 433.

anything in the British North America Act, 1867, or any Act amending the same, or any Act of the Parliament of Canada, or in any Order in Council or terms or conditions of union made or approved under any such Act as aforesaid.

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(And the Agreement in the said schedule with respect to the Province of Alberta at Clause 1 reads:)

1. ... the interest of the Crown in all Crown lands ... shall, from and after the coming into force of this Agreement ... belong to the Province ... subject ... to any interest other than that of the Crown in the same, ...

(Underlining is mine)

And Clause 14 of that Act regarding National Parks is also of relevant significance. It reads:

14. The parks mentioned in the Schedule hereto shall continue as national parks and the lands included therein, as the same as described in the Orders in Council in the said Schedule referred to (except such of the said lands as may be hereafter excluded therefrom), together with the mines and minerals (precious and base) in each of the said parks and the royalties incident thereto, shall continue to be vested in and administered by the Government of Canada as national parks, but in the event of the Parliament of Canada at any time declaring that the said lands or any part thereof are no longer required for park purposes, the lands, mines, minerals (precious and base) and the royalties incident thereto, specified in any such declaration, shall forthwith upon the making thereof belong to the Province, and the provisions of paragraph three of this agreement shall apply thereto as from the date of such declaration.

(Underlining is mine)

The excerpts from the said Imperial Statute illustrate the usual legislative intent and result *qua* existing rights and liabilities of third parties other than the Crown in right of Canada and the Provinces.

Such legislative intent and result obtains generally in respect to all Government of Canada legislation and the Regulations made thereunder. This is so by virtue of section 36(c) of the *Interpretation Act*, S. of C. 1967-68, c. 7.

Section 36(c) of the *Interpretation Act* provides:

- 36 Where an enactment is repealed in whole or in part, the repeal does not
- ...
- (c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed.

Each of the options to renew in these subject leases granted by the two renewal clauses created an interest in

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the lands described in the respective leases in each lessee suppliant (cf. *London and South Western Ry. Co. v. Gomm*<sup>10</sup>); and in my view, each lessee suppliant in consequence thereof, "acquired" a "right", or a "privilege", and by the same document the lessor respondent "incurred" an inchoate "obligation or a "liability" within the meaning of those words as employed in said section 36(c) of the *Interpretation Act*.

As a consequence, in my view, the renewal covenants in the subject leases are not subject to the infirmity that at the time they became operative, namely, 1966, there must be the current power by Regulations or legislation for the designated Minister to grant leases in the terms of these renewal covenants.

As to the fourth question, namely, whether the fifth covenant in each of the subject leases makes applicable all Regulations for the control and management of National Parks in force at the original dates of the subject leases, or which were made thereafter from time to time in that behalf by the Governor in Council, the suppliants submit that this provision refers to Regulations which may be made from time to time which are in the nature of police regulations, and not of the type, such as is the case here, empowering or not, the designated Minister to do what is in issue in this action. The respondent on the other hand submits that this provision makes all leases such as the subject leases subject to all Regulations for the control and management of the parks in force at the original date of the leases or which thereafter may be made from time to time by the Governor in Council without limitation as to type.

I am of the view that the suppliants' submission is the true interpretation of the meaning of the fifth covenant in the subject leases.

As to the fifth question, namely, whether the *Alberta Land Titles Act* has any application to the issues in these actions, the same may be resolved by considering two aspects of it and deciding:

Firstly, it is the rights as between the parties in these actions and not the rights as against any third parties that are in issue. For this reason, the matter of how the certificates of title respectively granted to the suppliants under

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<sup>10</sup> (1881-82) 20 Ch. Div. 562 at 580.

the Alberta *Land Titles Act* read is irrelevant. The supporting documents can and must be looked at to determine the true interpretation of them as between the parties. (cf. *C.P.R. Co. and Imperial Oil v. Turta*<sup>11</sup>).

Secondly, contrary to the submission of the suppliants, I am of the view that it is irrelevant to this question (1) the fact that the designated Minister or Deputy Minister of the respondent in about 1917 requested the Government of the Province of Alberta to amend the Alberta *Land Titles Act* to permit the registration of duplicate originals or copies duly certified by the designated Federal Government officials of any leases or other registerable instrument or instruments in connection with or relating to the title to land situated within the area set out for National Parks; (2) or the fact that the respondent in 1922 and in 1925 filed or registered certain subdivision plans, in the Land Titles Office in Edmonton under the provisions of section 67 of *The Dominion Land Surveys Act*; (3) or the fact that the suppliants hold certificates of title or duplicate certificates of title issued under the Alberta *Land Titles Act* (even though at no time did the respondent ever file or register in Alberta Land Titles Office any title to the lands in the subject leases so that a certificate of title under the Alberta *Land Titles Act* was issued to the Crown respondent in respect to such lands). In my view, the title of the respondent to the lands described in the subject leases by reason of any of the above Acts and facts has not been brought under nor is it otherwise subject to the Alberta *Land Titles Act*; and the respondent, by reason of them, or any of them, is not estopped from challenging the validity of these renewal clauses in the subject leases.

In any event, in respect to this fifth question, there can be no estoppel in the fact of the express provisions in the Imperial Statute, *British North America Act, 1930* above quoted where at paragraph 15 of the Agreement respecting the Province of Alberta it is provided, among other things, in relation to National Parks, that "The Parliament of Canada shall have exclusive legislative jurisdiction within the whole area included within the outer boundaries of each of the said parks notwithstanding

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<sup>11</sup> [1954] S.C.R. 427.

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that portions of such area may not form part of the park proper; the laws now in force within the said areas shall continue in force only until changed by the Parliament of Canada or under its authority, provided, however, that all laws of the Province now or hereafter in force, which are not repugnant to any law or regulation made applicable within the said area by or under the authority of the Parliament of Canada, shall extend to and be enforceable within the same, . . ." (cf. *Gooderham & Worts Ltd. v. Canadian Broadcasting Corp.*<sup>12</sup>). The relevant Regulations and legislation of the Parliament of Canada insofar as they are applicable to the determination of the issues herein are not repugnant to any provision of the *Alberta Land Titles Act*, in my view. But even if they were by virtue of this express provision in this Imperial Statute, there can be no estoppel.

In the result therefore, there will be Judgment declaring the suppliants are entitled to the relief sought by their petitions of right together with costs.

APPENDIX "A" TO THE REASONS FOR JUDGMENT  
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LIST OF LEGISLATION AND REGULATIONS  
MADE THEREUNDER

Statutes of Canada

A. 1886 - chapter 54	<i>The Dominion Lands Act</i>
1887 - chapter 32	<i>Rocky Mountains Park Act</i>
1902 - chapter 31	An Act to amend <i>The Rocky Mountains Park Act</i>
1906 R S C. - chapter 44	An Act to amend <i>The Rocky Mountains Park Act</i>
1906 R S C. - chapter 14	<i>The Dominion Forest Reserves Act</i>
1906 R S C. - chapter 55	<i>Dominion Lands Act</i>
1911 - chapter 10	<i>The Dominion Forest Reserves and Parks Act</i>
1913 - chapter 18	An Act to amend <i>The Dominion Forest Reserves and Parks Act</i>
1916 - chapter 15	An Act to amend <i>The Dominion Forest Reserves and Parks Act</i>

<sup>12</sup> [1947] A.C. 66; [1947] 1 D L R 417 (Imp P C).

1918 - chapter 4	An Act to amend <i>The Dominion Forest Reserves and Parks Act</i>
1919 - chapter 17	An Act to amend <i>The Dominion Forest Reserves and Parks Act</i>
1919 - chapter 49	An Act to amend <i>The Dominion Forest Reserves and Parks Act</i>
1927 R.S.C. - chapter 78	<i>Dominion Forest Reserves and Parks Act</i>
1927 R.S.C. - chapter 117	<i>Dominion Lands Surveys Act</i>
1928 - chapter 44	An Act relating to the submission to Parliament of Certain Regulations and Orders in Council
1930 - chapter 33	<i>The National Parks Act</i>

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B Imperial Statute

1930 - 21 Geo V. -  
chapter 26

*The British North America Act*

C Statutes of Alberta

1917 - chapter 3

An Act to amend the Statute Law

1955 - R.S.A. -  
chapter 170

*The Land Titles Act*

D Orders in Council

Regulations

1889 - P.C. 1350

Regulations for the control and management of the Rocky Mountains Park of Canada

1890 - P.C. 1694

Regulations for the control and management of the Rocky Mountains Park of Canada

1909 - P.C. 1340

Regulations of the National Parks of Canada

1911 - P.C. 1333

Re-establishing and making applicable to the Forest Reserves certain Regulations

1911 - P.C. 1336

Re-establishing and making applicable to the Dominion Parks, Regulations

1913 - P.C. 2028

Regulations for Dominion Forest Reserves

1913 - P.C. 2275

Regulations Respecting Buildings in Dominion Parks

1913 - P.C. 2349

Amending Section 75 of the Regulations relating to Forest Reserves

1930 - P.C. 1452

Amending National Parks Regulations

1954 - P.C. 1954-1918

National Parks General Regulations

1958 - P.C. 1958-1100

National Parks General Regulations, amended

1962 - P.C. 1962-268

National Parks General Regulations, amended.

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