BETWEEN:

1948 Nov. 29, 30 — 1949 Jan. 26

ST. ANN'S ISLAND SHOOTING AND FISHING CLUB LIMITED......... CLAIMANT;

AND

HIS MAJESTY THE KING..............RESPONDENT.

Crown—Indian Act R.S.C. 1906, c. 81, ss. 51 and 64—Non-compliance with requirements of Act—Authorizing Order in Council as required by Act not passed—Lease invalid without authorizing Order in Council—Superintendent General of Indian Affairs not authorized to enter into a lease—No estoppel against the Crown herein.

Claimant asks for a declaration that it is entitled to a renewal of a lease of Indian lands made between the Superintendent General of Indian Affairs and certain trustees pursuant to a renewal clause therein.

Held: That s. 64 of the Indian Act R.S.C. 1906, c. 81, did not confer on the Superintendent General of Indian Affairs original authority to enter into a lease of surrendered Indian lands as he was only the official named to complete those matters, such as execution of a lease, for which a valid authority existed; that s. 51 of the Act requires an Order in Council as the necessary preliminary to the validity of the lease entered into and no such Order in Council referable to that lease was passed at any time.

2. That the Crown is not estopped by anything that has been said or done by its officers or servants from alleging non-compliance with the Statute.

REFERENCE by the Minister of Mines and Resources of a question of law for the opinion of the Court.

The action was tried before the Honourable Mr. Justice Cameron at Ottawa.

A. S. Pattillo and *J. A. MacIntosh* for claimant.

Lee A. Kelley, K.C. and *W. R. Jackett* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

CAMERON J. now (January 26, 1949) delivered the following judgment:

In these proceedings the claimant asks for a declaration that it is entitled to a renewal of a lease dated May 19, 1925, made between the Superintendent General of Indian Affairs, of the First Part, and G. T. Clarkson and Walter

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Gow, in trust for St. Ann's Island Shooting and Fishing Club, of the Second Part, pursuant to a renewal clause therein and which I will later refer to more particularly. By letters dated the 12th day of April, 1944, and the 1st day of September, 1944, the lessees gave to the Superintendent General notice of their intention to renew the lease of the lands described in the said lease pursuant to the provisions thereof, but he refused to grant such renewal or to admit that the lessees therein were legally entitled to demand the same.

On November 1, 1945, the Minister, under section 37 of the Exchequer Court Act, referred the matter to this Court for adjudication. Pleadings were delivered. At the trial there was filed a statement of facts agreed to by counsel for the purpose only of having the following question of law submitted for the opinion of the Court, namely,

> Is the claimant entitled to a renewal for a further period of ten years from October 1, 1944, of the lease dated 19th May, 1925, on and subject to the like terms, stipulations and provisions as are contained in the said lease subject to the provisions of the supplemental indenture dated 14th April, 1931, save as to rental.

It is to be noted that by indenture dated September 4, 1945, the said trustees mentioned in the lease dated May 19, 1925, duly assigned to the claimant all their right title and interest in the said lease, including the right to renewal thereof, and in a certain further supplemental indenture dated April 14, 1941, between the same parties, in which supplemental indenture the boundaries of the property were settled and agreed upon. It is admitted for the purposes of this reference that all the rights of the lessees in the lease of 1925 are vested in the claimant. The sole question for determination, therefore, is whether the claimant is entitled to a renewal for a further period of ten years from October 1, 1944, when the former lease expired, such renewal to be on the same terms as the lease of May 19, 1925, save as to rental. The respondent alleges that the documents on which the claimant bases its claim are wholly invalid. It is admitted that if the leases from time to time entered into between the parties hereto were or are valid, they have not been forfeited by breach of any of the terms thereof, or otherwise.

The lands in question are Indian lands (that is, portions of Indian reserves which have been surrendered to the

Crown) in the County of Kent, Ontario. No question arises as to the validity of the surrender or the acceptance thereof by the Crown. Under the terms of the various leases executed by or under the authority of the Superintendent General of Indian Affairs, the Club has been in possession of the lands in question since 1881. At various times it has expended very substantial amounts for the permanent improvement of its facilities as a hunting and fishing club, including the erection of a club house and other buildings and the opening up of ditches and channels. Inasmuch as I have reached the conclusion that the surrender was absolute, I do not consider it necessary to refer in detail to the rights and privileges granted to the Club or the limitations placed thereon, some of which varied materially from time to time. The surrender being absolute and no rights having been reserved to the surrendering Indian Bands, the Crown, in my view, had full power in granting a lease to vary the terms and conditions from those previously in effect, as was thought necessary.

Exhibits A to M are certified copies of all the documents (other than letters) which affect the matter in issue. Ex. A is a resolution of a council of the Chippewa and Pottawatomie Indians of Walpole Island, dated March 18, 1880, accepting the offer of the Club to lease St. Ann's Island and included these words:

> The terms of the lease at ten years and privileged to renewal if everything satisfactory for another term.

The claimant does not rely in any way on this resolution, and in any event it would be of no force or effect because of the provisions of the Indian Act, 1880, ch. 28, s. 36, prohibiting the sale, alienation or leasing of any reserve or portion thereof until it had been released or surrendered to the Crown.

The first lease from the Superintendent General (Ex. B) is dated May 30, 1881. It is for a term of five years, renewable for a like term. Following the execution of that lease the officers of the Club raised certain questions as to the validity thereof and more particularly as to the validity of the surrender, the authority of the Superintendent General to execute the lease, and enquired as to whether an Order in Council had been passed accepting the surrender and authorizing the lease. In the result, a further

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meeting of the Indians was held on February 6, 1882, and a formal surrender executed in due form (Ex. C). On February 24, 1882, the Indian Superintendent at Sarnia wrote the Club Secretary (Ex. P) as follows:

> The defect in the preliminary proceedings regarding the lease to the Club has been remedied by taking from the Indians a formal surrender of St. Ann's Island for the purposes of said lease.

That was followed by an Order in Council P.C. 529 of April 3, 1882. Both of these documents are hereinafter set out in full.

On April 18, 1882, the Department wrote the Club Secretary as follows (Ex. Q):

> I have to inform you that the surrender made by the Walpole Island Indians of the shooting grounds covered by the lease to the St. Ann's Island Shooting and Fishing Club has been accepted by an Order of H. E. the Governor General in Council, dated the 3rd instant, and that the lease has been confirmed by said Order.

Both parties apparently considered that all necessary steps had been taken to validate the lease of 1882. Subsequently, new leases were entered into in 1884, 1892, 1894, 1906, 1915 (these being respectively Ex. E, F, I, J and K), and finally, in 1925, the lease containing the renewal clause on which the claimants now rely. The leases of 1884 and 1892 contained no provisions for renewal, but those of 1894, 1906 and 1915 each contained provisions for one renewal of ten years.

It may be noted that while the annual rental was originally $250, it had been increased to $750 in 1904 for the same property. The rental has remained at the latter figure since 1906, but by mutual consent the lease of 1915 excluded very substantial parts of the property originally leased, and that of 1925 excluded an additional area. By the supplemental indenture of April 14, 1931 (Ex. M), the parties mutually agreed that the property intended to be included in the lease of May 19, 1925, was as set out in the plan attached thereto; and in all other respects confirmed that lease.

Inasmuch as counsel for the claimant relies on the terms of the surrender and of P.C. 529, I think it advisable to set these out in full.

The surrender was in the following terms:

> Know all men by these presents, that we the Chiefs and principal men and Warriors of the Chippewa & Pottawatomie Indians of Walpole Island, being this day assembled in our Council House in presence of our visiting Superintendent—and referring to a meeting of Council held at this place

on the 18th day of March A.D. 1880—at which meeting it was duly resolved by a majority of those present at said meeting—that the assent of these Bands should be given to the issue of a lease by the Indian Department in favour of certain gentlemen who had applied therefor— of certain lands and marshes hereinafter described—And considering that consent thereto was then and there duly given:

We now do surrender & yield up to our Sovereign Lady the Queen and her Successors—All that certain parcel or tract of land and marsh, situated in the Province of Ontario and County of Kent, bounded by the Chenail E-carté, Johnston's Channel, and the navigable waters of Lake St. Clair; and which may be described and known as St. Ann's Island, and the marshes adjacent thereto.

To the end that said described territory may be leased to the Applicants for the purpose of shooting & fishing for such term and on such conditions as the Superintendent General of Indian Affairs may consider best for our advantage—

AND having heard read and explained a lease executed by the Deputy Superintendent of Indian Affairs in favor of Christopher Robinson, Esquire, of the City of Toronto, and certain other gentlemen in such lease named —And believing that such lease was executed in good faith and in accordance with our consent duly given in Council as aforesaid—

We hereby accept of said lease and confirm and establish the same.

In testimony whereof we have hereto set our hands and Seals this sixth day of February A.D. 1882.

Done in the name and on behalf of the Chippewas and Pottawatomies of Walpole Island.

P.C. 529 was as follows:

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 3rd April, 1882.

On a Memorandum, dated 7th March 1882, from the Superintendent General of Indian Affairs, submitting for acceptance by Your Excellency in accordance with the provisions of the Indian Act 1880, Section 37, Subsection 2, a Surrender, dated 9th February 1882, made to the Crown by the Chippewa and Pottawatomie Indians of Walpole Island, of that portion of their Reserve known as "St. Ann's Island" and the marshes adjacent thereto, for the purpose of the same being leased for the benefit of said Indians to the "St. Ann's Island Shooting and Fishing Club" for shooting and fishing purposes, and in confirmation of a lease covering said premises issued by this Department on the 30th of May 1881, to the aforesaid "St. Ann's Island Shooting and Fishing Club."

The Committee advise that the surrender be accepted and submit the same for Your Excellency's approval.

(Signed) A. M. Hill,
Asst. Clerk of the Privy Council.

In answering the questions submitted to the Court, I think that consideration must first be given to the law in effect when the lease of 1925 was entered into with the Superintendent General, that lease containing the following provisions for renewal:

And it is further hereby agreed between the parties hereto that the said parties of the second part, their successors in trust or assigns, shall

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on the expiration of the term hereby granted be entitled to renewal leases of the demised premises for further successive periods of ten years each at rentals to be fixed for each renewal (in case the parties cannot agree) by three arbitrators or a majority of them, one to be chosen by each of the parties and the third to be appointed by such two nominees—and in arriving at the rental to be paid the value of any buildings theretofore erected or paid for or improvements made or paid for by the parties of the second part, their successors in trust or assigns, shall not be taken into account, it being intended that such rental shall be the fair rental value of the demised premises had such buildings not been erected or improvements made. And the said party of the first part for himself and his successors in office covenants and agrees that should said parties of the second part, their successors in trust or assigns, desire such renewal leases or any of them, the same will be granted on and subject to the like terms, stipulations and provisions as are herein contained save as to rental which is to be agreed upon or fixed as aforesaid.

By section 51, ch. 81, R.S.C., 1906 (The Indian Act), it was provided that:

All Indian lands which are reserves or portions of reserves surrendered, or to be surrendered, to His Majesty, shall be deemed to be held for the same purpose as heretofore; and shall be managed, leased and sold as the Governor in Council directs, subject to the conditions of surrender and the provisions of this Part.

I am of the opinion that the validity of the 1925 lease and of its provisions for renewal must depend upon compliance with the provisions of that section. Counsel for the claimant referred me to the provisions of ch. 48, Statutes of Canada, 1924, being an Act for the settlement of certain questions between the Governments of Canada and Ontario respecting Indian reserve lands, and the corresponding Ontario Act of the same year. He pointed out that by the provisions of those Acts and of certain decisions in the Privy Council, the beneficial interest in surrendered Indian lands in Ontario was in the Province rather than in the Dominion, that by the provisions of those Acts the administration of such lands was in the Dominion and that upon their surrender such lands might be sold, leased or otherwise disposed of by Letters Patent under the Great Seal of Canada, or otherwise under the direction of the Government of Canada, the proceeds to be disposed of as therein provided. I shall not stop to consider whether the lands here in question do or do not fall within the provisions of those Acts. It is sufficient to indicate that whether they do or do not, section 51 (*supra*) was still in effect in 1925, and laid down the procedure to be followed.

It is submitted by counsel for the claimant that the provision which required a direction by the Governor in Council for the management, lease and sale of surrendered Indian lands is not absolute, and, that if, in the conditions of surrender or in the provisions of Part I of the Act, authority is given to the Superintendent General as to the leasing of such lands, then no Order in Council is required. He then refers to the document of surrender of 1882 (*supra*) which he says confers authority on the Superintendent General to determine the term and conditions of any lease as he thinks best, and submits that by reason of that provision no Order in Council was necessary. He also argues that by section 64, ch. 81, R.S.C., 1906 (The Indian Act), the Superintendent General had a power, without an Order in Council, to execute leases binding on the Crown and that, therefore, no Order in Council was necessary to validate such lease, as the provisions of section 64 come within the words "*subject to* the conditions of surrender and *the provisions of this Part.*" That section 64 is as follows:

> When by law or by any deed, lease or agreement relating to Indian lands, any notice is required to be given, or any act to be done by or on behalf of the Crown, such notice may be given and act done by or by the authority of the Superintendent General.

I am unable, however, to agree with that interpretation of section 51. I am of the opinion that that section is imperative in its requirements that only by a direction of the Governor in Council can surrendered Indian lands be validly managed, leased or sold, and that the disposition of surrendered Indian lands is thereby placed directly under the control of the Government. The words "subject to the conditions of surrender" are not to be interpreted as doing away with the necessity of a direction from the Governor in Council in any case, but, in my view, they require the Governor in Council when so dealing with the lands to take into consideration any conditions of the surrender, so that any directions given would be subject to such conditions. The reservation by the Indians of a right of way, or of use of water power in a stream, might be examples of such conditions; and the surrender, when accepted by the Governor in Council with such conditions, would to that extent limit the manner in which the lands could be managed, leased or sold.

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But in the surrender itself, I can find no such or any conditions which would be binding on the Crown. Claimant's counsel himself agrees that the surrender was absolute, the Indian Bands giving up to the Crown all their usufructuary interest in the lands, and that was the only interest they had therein (see *St. Catherines Milling & Lumber Co.* v. *The Queen* (1). A careful examination of the surrender shows that no such conditions were attached and that it was intended to be, and was in fact, an absolute surrender. It is true that the purpose of the surrender was indicated, namely, that the property should be leased to the Club for fishing and shooting; that the Superintendent General was named as the one who should determine the term of the lease and its conditions; and that approval was given to the lease of 1881. But in the view that I have taken of the meaning of section 51 (then s. 40, ch. 28, of the Indian Act of 1880), the surrendering Indian Bands had no power to do any of these things and their efforts to do so were wholly abortive. The statutory authority of the Governor in Council to manage, lease and sell could not be fettered in any such way, nor its authority and duty diverted to anyone named by the surrendering Indians.

The provisions of section 64 (*supra*) in my opinion do not confer on the Superintendent General the power to make leases of surrendered lands without the authority of an Order in Council as a necessary preliminary. To interpret them in that way would be to altogether negative the provisions of section 51. They must be read together and when so read the import of section 64 is clear. It means that when by law, or by any deed, lease or agreement relating to surrendered lands any notice or act is required to be done, such notice may be given or act done by, or by the authority of, the Superintendent General. If, for example, the lease of 1925 and all its terms, including the provisions for renewal, had been authorized by the Governor in Council, then the Superintendent General would be the party designated to execute the original lease and, without a further Order in Council, the renewal of such lease.

(1) (1889) 14 A.C. 46.

The section does not confer on him any original authority but names him as the person to carry out those things for which a valid authority exists.

It is admitted that there was no Order in Council which specifically authorized the Superintendent General to execute the lease of 1925. But it is submitted by the claimant, in the alternative, that if an Order in Council were necessary, P.C. 529 of 1882 was sufficient authorization for all subsequent leases entered into between it and the Superintendent General. With that contention I cannot agree. It might well be argued that the closing words of P.C. 529, "The Committee advises that the surrender be accepted, and submit the same for Your Excellency's approval," did nothing more than accept surrender. But I do not find it necessary to determine that point. Giving the Order in Council the widest possible meaning that could be attributed to it, and taking into consideration that the memorandum submitted for the consideration of the Governor in Council included the words, "in confirmation of a lease covering said premises issued by this Department on the 30th of May, 1881, to the aforesaid St. Ann's Island Shooting and Fishing Club," it is quite clear that if anything was authorized, the Order in Council retroactively authorized the lease of 1881 only, and that lease was for a term of five years with the right of renewal for a further period of five years only. P.C. 529 could not possibly be construed as validating a lease entered into forty-five years later. It may here be noted that in the memorandum submitted to Council, nothing is said as to that part of the surrender which purported to give to the Superintendent General power to determine the term and conditions of any lease. That matter was never before the Governor in Council.

My opinion, therefore, is that section 51 requires an Order in Council as the necessary preliminary to the validity of the lease of 1925, and that no such Order in Council referable to that lease was passed at any time.

Counsel for the claimant, however, submits that by reason of what has occurred, the respondent is estopped from denying the validity of the tenancy of the claimant. He points out that the Superintendent General, a Minister of the Crown, by executing the various leases, including

that of 1925, and by correspondence between the parties, held himself out as having authority to represent the Crown and to enter into the various leases; that as a result the claimant paid rent which was accepted by the respondent, and expended large sums of money on improving the lands for its purposes in the belief that such representations were well founded. He also refers to certain correspondence after the first lease was executed in 1881, when the trustees raised questions as to the validity of the surrender and the acceptance thereof, and the necessity of having an Order in Council authorizing its lease, at which time they were advised that the necessary steps to validate the lease had been taken. I have considered the cases on which he relies in respect of his argument that estoppel in pais may apply as against the Crown.

I have reached the conclusion on this point, that, in view of the statutory requirement of a direction by the Governor in Council, that the respondent is not estopped by the foregoing. Reference may be made to Phipson on Evidence, 8th ed., 667, where it is stated that:

> Estoppels of all kinds, however, are subject to one general rule: they cannot override the law of the land. Thus, where a particular formality is required by statute, no estoppel will cure the defect.

The problem was considered in the case of *Maritime Electric Co. Ltd.* v. *General Dairies Ld.* (1), in which it was

> *Held,* that the appellants were not estopped from recovering the sum claimed. The duty imposed by the Public Utilities Act on the appellants to charge, and on the respondents to pay, at scheduled rates, for all the electric current supplied by the one and used by the other could not be defeated or avoided by a mere mistake in the computation of accounts. The relevant sections of the Act were enacted for the benefit of a section of the public, and in such a case where the statute imposed a duty of a positive kind it was not open to the respondents to set up an estoppel to prevent it.
>
> An estoppel is only a rule of evidence, and could not avail to release the appellants from an obligation to obey the statute, nor could it enable the respondents to escape from the statutory obligation to pay at the scheduled rates. The duty of each party was to obey the law.

The judgment in that case was delivered by Lord Maugham. At p. 620 he said:

> the Court should first of all determine the nature of the obligation imposed by the statute, and then consider whether the admission of an estoppel would nullify the statutory provision.

(1) (1937) A.C. 610.

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And at p. 621:

> If we now turn to the authorities it must be admitted that reported cases in which the precise point now under consideration has been raised are rare. It is, however, to be observed that there is not a single case in which an estoppel has been allowed in such a case to defeat a statutory obligation of an unconditional character. The text-books have regarded the case as one closely analogous to the cases of high authority where it has been decided that a corporation could not be estopped from contending that a particular act was ultra vires.

He referred also to *In re a Bankruptcy Notice* (1), in which Atkin, L.J., stated:

> Whatever the principle may be (referring to a contention as regards approbation and reprobation) it appears to me that it does not apply to this case, for it seems to me well established that it is impossible in law for a person to allege any kind of principle which precludes him from alleging the invalidity of that which the statute has, on grounds of general public policy, enacted shall be invalid.

Reference may also be made to *Ontario Mining Company* v. *Seybold* (2), in which at p. 83 Lord Davey, in delivering the judgment in the House of Lords, said:

> But it was contended in the Courts below, and at their Lordships' bar was suggested rather than seriously argued, that the Ontario Government, by the acts and conduct of their officers, had in fact assented to and concurred in the selection of, at any rate, Reserve 38 B, notwithstanding the recital to the contrary in the agreement. The evidence of the circumstances relied on for this purpose was read to their Lordships; but on this point they adopt the opinion expressed by the learned Chancellor Boyd that the province cannot be bound by alleged acts of acquiescence on the part of various officers of the departments which are not brought home to or authorized by the proper executive or administrative organs of the Provincial Government, and are not manifested by any Order in Council or other authentic testimony. They, therefore, agree with the concurrent finding in the Courts below that no such assent as alleged had been proved.

In my view the respondent cannot be estopped by anything that has been done from alleging that there has not been a compliance with the statutory requirements of section 54.

Having found that the requirements of the statute have not been complied with and that the respondent is not estopped by anything that has been done or said by its officers or servants from alleging non-compliance with the statute, it becomes necessary only to consider the result of such non-compliance.

(1) (1924) 2 Ch. 76.

(2) (1903) A.C. 73.

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Reference may be made to the judgment of the Judicial Committee of the Privy Council in *The King* v. *Vancouver Lumber Company* (1). In that case a lease was entered into between the Crown, acting through the Minister of Militia and Defence, and the Company, the demise being for twenty-five years "renewable." The grant of the lease was made under a statutory authority which provided that the Governor in Council might authorize the sale or lease of any lands vested in Her Majesty not required for public purposes, and for the sale or lease of which there was no other provision in the law. An Order in Council was passed giving authority to lease for twenty-five years. Subsequently, the solicitor for the Company opened negotiations with the Minister in regard to variations in the lease. As a result endorsements were made on the former lease and signed by the Minister, varying its terms and giving rights of renewal for successive periods of twenty-five years. No Order in Council was passed approving of these changes, although there was some evidence that the agent of the Company had been assured by the Minister that an Order in Council had been passed authorizing the new terms. In fact, no such Order in Council was passed at any time. It was held that the signature of the Minister was an insufficient compliance with the terms of the statute and that, in the absence of an Order in Council, the new terms were void.

In the case of *British American Fish Company* v. *The King* (2) (affirmed 52 D.L.R. 689), Cassels, J., in this Court held that a lease for fishing privileges, and executed by the Minister of Marine and Fisheries for a term of twenty-one years with an option of renewing for a further period of twenty-one years, was totally invalid as to the option, the same not having been authorized by the Order in Council which had recommended the granting of the lease for twenty-one years only.

In *Gooderham & Worts Ltd.* v. *Canadian Broadcasting Corporation* (3), it was held that a clause in the lease which was unauthorized by the Order in Council was void *ab initio*. In that case Lord MacMillan also pointed out that the alleged estoppel was against pleading of a statute.

(1) 50 D.L.R. 6.
(2) 44 D.L.R. 750.
(3) (1947) A.C. 66.

Reference may also be made to *The Queen* v. *Woodburn* (1), *The King* v. *McMaster* (2), *Easterbrook* v. *The King* (3), and *Booth* v. *The King* (4).

Following these decisions, I have reached the conclusion that as the lease of 1925 was never authorized by an Order in Council, there has been non-compliance with the imperative provisions of section 51 and that the lease and the provisions for renewal therein are wholly void.

Counsel for the respondent also alleged invalidity of the lease of 1925 on the ground that the property therein demised (as amended by the agreement of 1931) included property not contained in the surrender of 1882. The burden of proof thereof is on the respondent, and on the somewhat meagre evidence before me I am quite unable to find as a fact that such is the case. In fact, the only affirmative evidence is to the contrary. I would further point out that even if it were so established, there has been no evidence to indicate that the respondent had not the right to include the additional parts in the lease; such additional parts may have been acquired by the Crown otherwise than by the surrender referred to. On this matter I must find that the respondent fails.

I therefore answer the question submitted in the negative. Under all the circumstances I think each party should bear its own costs.

Having reached the above conclusion on the question submitted for determination, I think I should make a further comment. The respondent has succeeded in securing a declaration of invalidity solely because of the failure to pass the requisite Order in Council, and not because the claimant had failed to do anything which was within its powers to do. The evidence indicates that the buildings erected by the claimant, or the former trustees of the Club, exceeded $25,000 in value and that, in addition, very substantial amounts have been laid out in digging ditches and channels. Some disposition of the property will have to be made by the respondent. Inasmuch as the claim to a perpetual lease has now been disposed of adversely to the claimant, and as the question of fixing a fair rental for the future is now open, it would

(1) (1898) 29 S.C.R. 112.
(2) (1926) Ex.C.R. 68.
(3) (1931) S.C.R. 210.
(4) 51 S.C.R. 20.

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seem but fair and reasonable that the claimant be given an opportunity to protect its investment by a new and valid lease for a limited term.

Judgment accordingly.

The Supreme Court of Canada on February 21, 1950, not yet reported, dismissed an appeal herein.