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Jan. 12.

THE ATTORNEY-GENERAL OF CANADA, ON  
THE RELATION OF THOMAS HOUSE,  
PLAINTIFF;

AND

HARVEY LEE MASSINGHILL AND BENJAMIN  
GRAHAM MASSINGHILL,  
DEFENDANTS.

*Public lands—Homestead—Abandonment—Misrepresentation—Subsequent patent—Estoppel.*

The cancellation of a homestead entry by the Crown, brought about by the false statements of the entrant in his declaration of abandonment, will estop him from attacking a patent to the land subsequently issued by the Crown in good faith.

**A**CTION for the cancellation of a patent to land.

Tried before the Honourable Mr. Justice Audette, at Regina, Sask., December 3, 1914.

*H. Y. MacDonald*, K.C., for plaintiff.

*W. B. Willoughby*, K.C., and *Arthur Burnett*, for defendants.

AUDETTE, J. (January 12, 1915) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, at the request of the relator, Thomas House, to have declared null and void a certain patent issued on November 24th, 1913, granting to the defendants the lands and premises in the said information described.

On or about April 11th, 1911, the relator, Thomas House, made entry as a homestead settler for the

southwest quarter of Section 16, Township 23, Range 29, West of the Third Meridian, in the Province of Saskatchewan; and at the same time he also pre-empted the southeast quarter of the said section.

Stripped of unnecessary details of fact, it is sufficient to say that in the fall of 1912 it became known that the Canadian Pacific Railway Company had decided to establish a divisional point for their railway in the neighbourhood of the relator's land, and that a new line of railway was being opened, both facts giving an enhanced value to the lands in question. The lands also adjoin the town site.

The relator, wishing to benefit by this enhanced value, formed the idea of selling his land before the time assigned under his homestead right had entitled him to a patent. He found it was too long a time to wait, and he thought if he could get title to his lands he could sell immediately. Someone secured for him a Cypress Hill Forest Reserve Scrip held by George Armstrong.

Both Armstrong and House, on May 15th, 1913, went to the Dominion Land Office at Maple Creek with the object of placing that scrip upon the relator's property. House there informed Stockdale, the land agent, that he wanted to abandon his property in favour of Armstrong, who held the scrip, and the agent answered that a homesteader or pre-emptor could only abandon in favour of the relations mentioned in the regulations. He further said he could not allow the scrip in question to be placed upon the land without being first instructed by Ottawa in respect to the same. Then House said he wanted to abandon anyway, and the agent said he warned him he would have to take his chances, because under such abandonment, the lands would

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have to be posted before being disposed of. The agent, however, undertook to notify them both when the land would be so posted and Armstrong gave him \$2 for the purpose of telegraphing him when it would be so posted. These \$2 were afterwards refunded. There is some conflicting evidence as to another \$20 given to Stockdale on that occasion, but it has no bearing upon the case.

After House had decided to abandon, the agent began filling the forms of "Declaration of Abandonment", both for the homestead and pre-emption rights respectively, and the same are filed herein at Exhibits 1 and 2. When it came to the part calling for the reasons of the abandonment, the agent asked House and Armstrong what reasons would be assigned for such abandonment, and Armstrong suggested, "Sandy and not adapted for farming purposes", and that was duly entered in the declaration with House's assent.

Armstrong has sold for \$6,400 the scrip in question to one Shannon, who had arranged matters for House, and the latter declared he had given a note to Shannon for whatever he paid to Armstrong. It is contended by one of the defendants also that House told him he had already received something like \$1,800 and would ultimately receive \$6,000 and 50 head of cattle if he succeeded in his abandonment.

Now, House in his testimony at trial, declares that the land he was abandoning was good farm land, and if sandy it is very little, and that he allowed the agent to put in these words because it was necessary, adding he knew it was not right to put that in. He further said he knew when he signed the declaration

it was as if he were swearing, taking his oath, to the truth of the document.

House, then, in making the "Declarations of Abandonment", knew he was twice swearing to a falsehood, to something that was untrue, when he declared that the land was "sandy and not adapted for farming purposes". He also affirmed, by another clause of the "Declarations", that he had not received, directly or indirectly, nor had been promised, nor did he expect to receive any consideration of any kind for allowing such entry to be cancelled, and in that respect, besides the evidence alleging the payment of \$1,800 and more to come, the whole trend of the evidence does not bear that out. He further states in his declaration he intends to immediately re-enter for other land, if he got permission; but when the lands are offered him he does not do so, because it was never his intention of doing so notwithstanding such statement in his declaration of abandonment.

Upon receiving the "Declarations of Abandonment", the Department of the Interior, at Ottawa, taking for granted the veracity of House's allegations, kindly acquiesced in his demand and granted him the cancellation of his entry. No fault, indeed, can be found with what the Crown did,—it only acted on what House said and this with the object of helping him. And while cancelling the entry they offered him some other land upon which to enter, the time placed on the original homestead to count, and afterwards sending him a cheque for \$200, which had been collected from the defendants and as representing the improvements made by House upon his abandoned land.

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Stockdale, the agent, broke faith with House and Armstrong and did not notify them when the lands were posted up for 10 days; but he was not obliged to do so under any of the Regulations relating to Dominion lands, and it was not part of his duty to do so. And while omitting to so notify them he was not derelict in his official duties yet he was certainly so in the moral obligation arising under his promise to them. Moreover, a copy of the letter of June 9th, 1912, (Exhibit B), appears on its face to have been received at the Dominion Land Office, Maple Creek, on June 13th, 1913, stating that the pre-emption entry would be cancelled. Yet by Exhibit No. 4, it appears that Stockdale was writing on June 17th, 1913, to George M. Armstrong, saying that up to the present time he had not received any word from Ottawa in regard to the lands in question. Peter Armstrong also stated that on the last Tuesday of June, 1913,—(which would be on the 24th) he was at Maple Creek when he stopped Stockdale on the street at about 8.30 or 8.45 a.m. and asked him if he had received news from Ottawa about the lands in which his brother was interested, and that Stockdale answered, “No, that it took time”. However, Stockdale says in his evidence that he did meet Armstrong at about that date, but told him he had better come to his office, that he did not know the land had been posted. All of this goes to establish that Stockdale’s conduct in all these transactions, while strictly keeping within the law, is certainly not upright and frank, and is anything but commendable.

The cancellation of the entry appears to have been made on June 14th, 1913,—the lands were posted up on the 19th of the same month,—and at the expiration of the 10 days, *i.e.*, on June 30th, the land

was taken up by the defendants, who subsequently obtained a patent and which the relator now seeks to have cancelled and declared null and void.

If House's entry was cancelled, and his abandonment acquiesced in, he has certainly but himself to blame. He might have sent the scrip to Ottawa and asked to have it placed upon his land, and in doing so he would have acted honestly, disclosing all he was doing, all he wanted. The agent, Stockdale, was not there to give him legal advice,—no fault can be found in all he told him before sending the "Declarations of Abandonment".

The relator in abandoning took chances, and the defendants becoming aware that the lands would be put up were more diligent and did what in law they were entitled to do. If any mischief or damage result from the abandonment of the lands, after their being posted up for 10 days, who is to blame if not the relator? The original cause of this mischief, the *causa causans*, is obviously the false statements House made in his declarations which secured him the abandonment, and he is therefore estopped from benefiting by his wrongful act.

Whoever seeks equity must come into Court with clean hands. House knew of the impropriety of making the false statements contained in the "Declarations of Abandonment"; he knew it was wrong, and admitted it in his evidence. He knew that by making false statements he was transgressing the rules of fair dealing, the common rules of right and wrong, and he is now estopped from setting up anything which is the result of such dealing. No man can take advantage of his own wrong, *Nullus commodum capre potest de injuria sua propria*. The author of wrong, who thereby contributed in placing a person in a position quite honest and legal

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shall not be allowed to take advantage of his own illegal act or avail himself of his wrong, as in the present case, in saying he did not intend to abandon without re-entry after the 10 days, and that he should have been given the right-of-way over the defendants. House deliberately chose to abandon unconditionally, taking all the chances of which he was made well aware before making the declarations,—he cannot to-day be given preference over the public when his lands were posted,—much more so indeed when the abandonment was granted upon false statement duly sworn to in a declaration that has the same legal effect as an oath.

“If a man, by his words or conduct, wilfully endeavours to cause another to believe in a certain state of things which the first knows to be false, and if the second believes in such state of things and acts upon his belief, he who knowingly made the false statement is estopped from averring afterwards that such a state of things did not exist at the time.” *Broom’s Legal Maxims*.<sup>1</sup>

House succeeded in cancelling his entry upon a misrepresentation of existing facts, and as a result of his action a patent was given in good faith by the Crown after the posting up of the lands in the regular and usual manner, therefore, under the circumstances, it is found that a Crown patent cannot thus be trifled with, impeached and cancelled under such circumstances, and the action is dismissed with costs.

*Action dismissed.*

Solicitors for plaintiff: *MacCraken, Henderson, Greene & Herridge.*

Solicitor for defendants: *Arthur Burnett.*

<sup>1</sup> 8th Ed. p.p. 240, 241.