1913
Feb. 17.

THE KING, ON THE INFORMATION OF THE ATTORNEY-GENERAL OF CANADA. } PLAINTIFF;

AND

GEORGE CRUMB..... DEFENDANT.

Public Land—Lease—Information to cancel—Improvidence—Knowledge of Crown officials of litigation respecting property in question.

In proceedings on behalf of the Crown to annul and cancel a certain lease of Ordnance and Admiralty lands, it appeared that although there was information on their files respecting litigation at one time pending in the civil courts between the defendant's predecessor in title and other parties with respect to the property demised, the officials of the Department of the Interior issued the lease in question. It appeared, however, that at the time the lease was issued the Department was not aware of a judgment in one of the civil courts which decided adversely to the rights of the defendant's predecessor in title.

Held, under all the circumstances, that the lease was issued through inadvertence and improvidently and that the same should be cancelled.

2. The officers of the Crown should have satisfied themselves before issuing the lease that the litigation, of which there was knowledge in the Department, had first been disposed of in favour of the applicant.

THIS was an information exhibited by the Attorney-General of the Dominion of Canada seeking to have a lease of certain public lands annulled and cancelled.

The facts are fully stated in the reasons for judgment.

February 7th, 1913.

The case now came on for hearing before the Honourable Mr. Justice Audette at Toronto.

W. D. Swayze, for the plaintiff;

W. M. German, K.C., for the defendant.

AUDETTE, J., now (February 17th, 1913) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it is sought to annul

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and cancel a certain indenture of lease, dated the 21st day of April, A.D. 1911, of certain Ordnance and Admiralty lands, in the Township of Sherbrooke, County of Haldimand, Province of Ontario, known as Lot No. 41, which, it is claimed, has been granted by inadvertence.

Many years ago, one Henry Ross squatted and built upon the lot in question. His children, who also continued in possession, conveyed to Ross's grandchildren Nettie White and George Little, whose mother (Ross's daughter) remarried one Wellington Thompson, who since his marriage with their mother occupied the premises in question. Shortly after the death of his wife (the mother of Nettie White and George Little) Thompson claimed title to the property, and both Nettie White and George Little took action in the High Court of Justice, Ontario, to have their rights determined.

This action was tried on the 25th day of May, 1905, and the judgment was not delivered until the 4th day of June, 1910, a little over five years after the hearing. An appeal was taken from that judgment, and the judgment on appeal confirming the same was delivered on the 30th January, 1911.

Under both of these judgments Thompson failed, and the title was determined in favour of Ross's grandchildren, Nettie White and George Little, as against the step-father.

In the interval between the trial and the judgment of the High Court, while the action was still pending and without waiting for the result of the case, Thompson sold the property to the present defendant George Crumb, on the 7th day of February, 1907, whereupon the latter took possession of the said lands, and the buildings and improvements thereon.

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When Thompson sold to Crumb, they both went together to Mr. Bradford, a lawyer who had defended Thompson in the above mentioned case and who knew all about it, and Thompson testifies that having asked Mr. Bradford if he could sell, the latter advised him he could "sell all right". Crumb, who was then present, heard the lawyer, and therefore knew all about the pending case. Thompson further adds he told Crumb that the judgment was not as yet given, that the question of his title to the property was to be decided in that lawsuit, and he was not sure how it was coming out. Thompson adds, he was buying my chances,—"that is the ins and outs of it". Crumb testifies that Mr. Bradford claimed that there had been some kind of a trial, and it had been settled in favour of Thompson, and Mr. Bradford thought "I would be safe in buying it",—he advised me to buy it and that I would be safe in buying it. Mr. Bradford was then instructed to prepare the deed, and it was signed the following day—Crumb paying $600.—namely, $500 cash, and $100 by a note which was afterwards paid. Crumb was well aware under what circumstances he was buying, and in no case could the maxim of *caveat emptor* better apply.

Crumb further testifies that after the pronouncement of the judgment on the 4th June, 1910, he asked Thompson to go with him to Mr. Bradford's office to sign the necessary papers to appeal from that judgment which had gone against him, and that an appeal should be put in.

Following the judgment of the appellate court and Crumb refusing to vacate the premises, Nettie White and George Little took an action for ejectment against Crumb, the present defendant, and the latter having been examined on Discovery, it was elicited that he

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had, on the 21st April, 1911, obtained from the Crown a lease of the land in question.

This lease was obtained under the following circumstances:—Crumb went to Mr. German, his legal adviser, and asked him to make application on his behalf for that lease, without however at the time disclosing to Mr. German anything about the litigation in respect of the property, suppressing any information with respect to any trouble about the property. Thereupon Mr. German, on the 6th March, 1911, over a month after the delivery of the judgment of the appellate court determining the rights of the parties to the property in question, wrote to the Deputy Minister of the Interior, and, on behalf of Crumb, made application for a lease of the land in question, without disclosing anything about the litigation in question, which was unknown to him.

On receipt of this application, instructions were given, by the Deputy Minister of the Interior, to J. P. Dunn, a clerk in charge of the Ordnance and Admiralty lands of the Department of the Interior, to take the necessary steps to prepare the lease, as per a memo. to that effect in the fyle of the Department. In compliance with these instructions, the lease was duly passed on the 21st April, 1911, and delivered to Mr. German.

Now, Mr. Dunn, who was heard as a witness in this case, informed us that there was, at the time of the issuing of the lease, on record in the Department, a reference to this litigation in 1905. The former clerk in charge of that branch had made a report stating that some trouble or litigation had been in existence, or had taken place between Thompson and White and Little. Although Mr. Dunn said he had knowledge of what was on the fyle and in the report, on receiving instructions

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to prepare the lease, he did not look into it any further, assuming that since 1905 the matter had been adjusted and closed, and that there was no further trouble in connection with this, or any further litigation. Mr. Dunn further testified there is no written or verbal instruction given respecting a case of this kind in the Department; but where there is litigation pending with respect to the subjectmatter of a piece of land for which a lease is asked, the custom is that the Department does not undertake to issue any lease until the litigation is settled.

At the time the lease was issued the Department was not aware of the judgment in the case of *White and Little* v. *Thompson*, (1) this judgment having only been filed and deposited in the Department on the 30th November, 1911. On the receipt of the judgment in the Department Mr. Dunn says he made a report upon the same to the Deputy Minister of the Interior and the matter was referred to the law officers—hence the present action.

Under all the circumstances of the case, one cannot come to any other conclusion than that the lease was issued by inadvertence and in improvidence. *Attorney-General* v. *Contois*, (2) *Attorney-General* v. *Fonseca*, (3) The officers of the Crown should have satisfied themselves that the litigation, of which there was note and mention upon their own fyle, had been disposed of in favour of the applicant before issuing a lease for a piece of land which was the subject-matter of such litigation. The lease should be cancelled, and to cancel it gives no just cause of complaint to the defendant who bought this very property with his eyes open, well knowing of the pending litigation both when he bought from Thomp-

(1) 2 O. W. N., 667. 18 O. W. R., 478. (2) 25 Grant, 346.
(3) 17 S. C. R., 612.

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son and when he made his application for the lease. Had he not suppressed his knowledge of the determination of the litigation against his vendor when he made his application, this lease according to the custom of the Department as explained by witness Dunn (p. 7) would not have been issued and the present action avoided. If the lease has to be cancelled he has only himself to blame.

As the officers of the Crown acted in improvidence in issuing the lease, and as Crumb was at fault in not disclosing all the important circumstances of the litigation respecting the subject-matter of the lease when making his application for the same, justice will be done if no costs be allowed to either party.

Therefore there will be judgment annulling and cancelling the Crown's lease in question in this case, and without costs to either party.

Judgment accordingly.

Solicitor for the plaintiff: *W. D. Swayze.*

Solicitors for the defendant: *German & Morwood.*

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