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*Dec. 14, 15
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June 26

THE PRUDENTIAL TRUST COMPANY LIMITED (*Applicant*) .... APPELLANT;

AND

THE REGISTRAR, THE LAND TITLES OFFICE, HUMBOLDT LAND REGISTRATION DISTRICT (*Respondent*) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Real property—Land titles system—Effect of certificate—Notation "Minerals Included" erroneously made by registrar—Rights of purchaser relying on certificate—The Land Titles Act, R.S.S. 1953, c. 108, ss. 66, 67, 200(1).

Crown lands were granted in 1909 by a patent which reserved to the Crown all mines and minerals. After various mesne conveyances, a certificate of title was issued on July 11, 1929, bearing a rubber stamp endorsement "Minerals Included". On October 4, 1949, the then owner of the lands conveyed them to transferees to whom a certificate of title was issued with the same endorsement. On January 29, 1951, these owners executed a transfer of a one-half interest in the mines and minerals to the appellant company and a certificate of title was issued to the appellant on February 12, 1954. The respondent had filed a caveat on October 9, 1953, on behalf of Her Majesty in the right of

*PRESENT: Rand, Kellock, Locke, Cartwright and Nolan JJ.

the Province against the registration of any instrument affecting title to the minerals. The appellant then proceeded by way of originating notice to determine the title to the minerals.

Held: The caveat must be withdrawn. The appellant had a title good as against all persons, including the Crown, to the mines and minerals conveyed to it by the transfer of 1951. Whatever might be said as to the position before the Province of Saskatchewan acquired its natural resources in 1930, the effect of the certificates issued after that date and bearing the endorsement "Minerals Included" was conclusive on a proper reading of ss. 66, 67 and 200(1) of *The Land Titles Act.*

Per Rand, Locke, Cartwright and Nolan JJ.: The mistake made in endorsing the certificate did not result in a "wrong description of boundaries or parcels" within the meaning of s. 200(1). *Canadian Pacific Railway Co. Ltd. et al. v. Turta et al.,* [1954] S.C.R. 427, applied.

APPEAL from a judgment of the Court of Appeal for Saskatchewan (1) affirming a judgment of Doiron J. (2). Appeal allowed.

E. C. Leslie, Q.C., for the applicant, appellant.

Roy S. Meldrum, Q.C., and *Jule G. Gebhart,* for the respondent.

RAND J.:—The administration of lands by the Dominion in what is now the Province of Saskatchewan up to September 1, 1905, the date of the erection of the Province, was, for the purposes here, under *The Dominion Lands Act,* R.S.C. 1886, c. 54, and *The Land Titles Act,* 1894 (Can.), c. 28. By 4-5 Ed. VII, c. 42, the constituting Act, the ungranted public lands and reserved interests in granted lands were retained by the Dominion to be administered in the interest generally of Canada. By s. 16 all laws and regulations then in force were continued as if the Act had not been passed, but subject to be repealed or amended by Parliament or Legislature according to the authority of each.

The Province, by c. 24 of its statutes of 1906, enacted *The Land Titles Act* which, by s. 204, was to come into force upon the repeal, so far as it was applicable to lands within the Province, of *The Land Titles Act,* 1894. This repeal was effected by order in council dated July 23, 1906, under the authority of 4-5 Ed. VII (Can.), c. 18, and became final on September 8, 1906, the date of its last publication in the Canada Gazette. From that date, therefore, the provincial *Land Titles Act* applied to lands granted thereafter by the

(1) (1956), 18 W.W.R. 1, 2 D.L.R. (2d) 29. (2) (1955), 16 W.W.R. 287.

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Dominion, the letters patent for which were forwarded direct to the provincial registrars of land titles. The distinction so indicated between the proprietary interests of the Dominion and their administration and the regulatory jurisdiction of the Province over its own as well as the proprietary interests of private persons becomes significant to the resolution of the controversy here presented.

The interests retained by the Dominion, whether in the form of reservations or exceptions in the grant or in escheat or forfeiture (and apart from cases of grants of less than fee simple), were beyond the operation of provincial law; they were property of Canada and under s. 91 of the *British North America Act* within the exclusive legislative jurisdiction of Parliament. It is not suggested that any statutory provision of Parliament subjected them, by way of adoption, to the operation of the provincial *Land Titles Act*; and they were thus, after September 8, 1906, unaffected by any registration enactment.

This remained the situation until October 1, 1930, when *The Saskatchewan Natural Resources Act,* 1930 (Can.), c. 41, came into force. By its provisions and those of the agreement which it ratified, all interests of the Dominion in and connected with lands within the Province other than those which were to continue to be administered by the Dominion under the various heads of s. 91 of the federation Act, were transferred to the Province.

As of April 1, 1930, the provincial Legislature passed *The Administration of Natural Resources (Temporary) Act, 1930,* c. 12 of the statutes of that year. By s. 2 the provisions of certain Dominion statutes, including *The Dominion Lands Act,* enumerated in a schedule, so far as they dealt with matters within provincial authority, were continued in force. Broad powers of repeal and substitution and for making regulations were conferred on the Lieutenant Governor in council; and the setting up of a Department to administer the transferred resources was authorized.

The effect of these enactments was that the transferred interests passed under the control of the Province as of October 1, 1930, and that the only legislation then applicable was that of the continued provisions of the *Dominion Lands Act* enabling their administration and the provincial *Land Titles Act* of 1906 as amended.

The Provincial Lands Act, 1931 (Sask.), c. 14, and *The Mineral Resources Act, 1931* (Sask.), c. 16, became effective on August 15 of that year. Between October 1, 1930, and that date, what was the standing of the title to mineral rights so transferred in relation to *The Land Titles Act*? The Province had become in effect the owner of minerals reserved in original Dominion grants, the remaining interests in which, speaking generally, were held under certificates of title authorized by the provincial statute which contained provisions subjecting the interests of the Crown to certain effects of the declarations of title contained in the certificates. Did the transferred interest in reservations thereupon become subject to what are now ss. 67 and 200 of *The Land Titles Act*, R.S.S. 1953, c. 108, in the same manner and to the same extent as if the grants had been made originally by the Province, for example, between October 1, 1930, and March 11, 1931?

Section 67 deals with a certificate as an instrument of title in its descriptive aspect, as in an abstract; and in addition to express registrations for which provision is made by the statute, the certificate impliedly tabulates certain interests to which the title certified is declared to be subject. That, as a provincial instrument, it can and should exempt from its descriptive inclusion an interest reserved to the Crown in the original grant whenever and by whomever made, seems to me to be obvious. Its purpose is to furnish a true and correct specification of the estate or interest in land of which the statute affirms a definitive legal ownership in the holder, to distribute by enumeration the total interests of the fee simple with all burdens and subtractions however they arise. This function is to be distinguished from that of those sections which declare the legal effect of that description in relation to conflicting sources of interests or titles.

The clause in the first paragraph of s. 67, "unless the contrary is expressly declared", likewise goes to a descriptive purpose and is unobjectionable. When the operative efficacy of s. 200, on which the trust company rests its claim, is extended to clause (*a*) of s. 67, however, a further consideration must be taken into account. As already mentioned, a reservation in a grant by and subsisting in the Dominion cannot be affected by such a provision as s. 200. But when

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that reserved interest comes within the administration of the Province, a different situation is presented, in the examination of which a distinction must be made between a grant, say, of minerals to an individual and an administrative transfer, as in 1930, to the Province. If, for example, between June 11, 1929, when the certificate in this case was issued to the tax purchaser, and October 1, 1930, the Dominion Government had granted the minerals to A, would the prior certificate with its endorsement "Minerals Included" have prevailed over that issued upon the later grant? I should say not, because as the Dominion Crown was not bound by the provincial Act, its grant could not be nullified as from the moment of its issue. If a similar situation had arisen before September 5, 1905, while the Act of 1894 was in force, a different question would have been presented, calling, in my opinion, for a different answer.

But after October 1, 1930, there is the coincidence in the Province of both the administrative control of the minerals and the subjection of the Crown to the statute, as would have been the case of the Dominion between 1894 and September 1, 1905; and although a grant of the minerals by the Dominion to an individual could not be defeated by provincial law, a transfer of administrative powers over Crown interests to the Province can be nullified by an instrument given appropriate efficacy by provincial legislation. If the certificate issued in 1949 containing the same endorsement as in those of 1911 and 1929, "Minerals Included", would supersede the prior vested interests of the Province, uncertified, as I think it would, I can see no escape from attributing the same effect after October 1, 1930, to the certificate of 1929 or its predecessor of 1911. Once ownership, as it may be called, of the Province arises, the statute applies automatically, "every certificate" shall be "conclusive evidence . . . as against Her Majesty", and no subsequent date can be fixed as marking the point of producing that result. It is as if on November 1, 1930, the Province for the first time enacted s. 200; the same coincidence would arise with the same effect, just as in the case of a subsisting reservation made before 1894 at the moment of the enactment of s. 57, the forerunner of s. 200. If the certificate of 1949 had been issued on October 2, 1930,

would the result have been different? I do not think so. What, then, do ss. 67 and 200 provide as binding the provincial Crown?

Section 67 had its prototype in s. 56 of the Act of 1894 and to the end of clause (*a*) is identical in its language; the subsequent clauses have been somewhat modified in their terms and some particulars have been added to the class of interests which generally they cover; but essentially the two sections deal with the same matters and serve the same purpose, a purpose already elaborated. The phrase "unless the contrary is expressly declared", the vital phrase, does not mean the logical converse of the affirmative "shall be subject to"; it is not that the express declaration should, for example, be "This certificate is not subject to subsisting reservations in the original grant from the Crown"; that would involve a self-contradiction. The reservations may still remain in the Crown or may have been granted, and in the latter case they would be embodied in a certificate. What the section provides for as a contrary declaration is express language to the effect that the content of the land described and certified as owned by the holder includes a specific interest that, in the grant, may have been reserved. The interest is to be "subsisting"; if the reservation no longer subsists as such in the Crown, its subject-matter must have become merged in or released from the estate declared by the certificate, or have been disposed of by grant. There might, of course, have been nothing reserved. The important consideration is that the implication of the declaration or specific inclusion, that the reservation is no longer "subsisting", may be erroneous.

Then s. 200 enters: the certificate is to be conclusive against Her Majesty as well as all other persons. "Subject to the exceptions and reservations implied under the provisions of this Act" must mean, when related to s. 67, as they are to be interpreted along with the clause providing the "declaration to the contrary". And here arises the question of what is meant by being "under the Act" where "land" is defined to include "any interest". It means either that the interest has been embodied in a certificate or that, by the language of the statute, it has been drawn within the operation of provisions declaring the conclusiveness of a certificate. If the reservation of an interest in the original

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grant by a Province remains for all purposes outside of and unaffected by the statute, the "declaration to the contrary" is read out of s. 67, and clause (*a*) serves the purpose only of a notice that it is excluded absolutely from the certificate. But the other clauses have not that purpose: they are concerned with interests which are created outside of the Act, which, but for the enumeration, would be overridden by the certificate, but which by an "express declaration to the contrary" can be defeated. I cannot see how, in the light of s. 200, a distinction is to be made between them; and if one can be overridden by a declaration, so can all. The necessary implication of the clause, then, is that the interest of the Province arising from a reservation in an original provincial grant can be bound by such a declaration in a certificate.

It follows that s. 67(*a*) provides for a descriptive title in a certificate in priority to subsisting Crown reservations made in original grants by either Government, and by force of s. 200 this is as operative against the Province when the reserved interest has been transferred to it by the Dominion as when the reservation has been made by itself.

Is there, then, under s. 200, a case of "wrong description of boundaries or parcels"? The judgment of this Court in *Canadian Pacific Railway Co. Ltd. et al. v. Turta et al.* (1), held that similar language in the Alberta Act did not embrace the omission of a reservation of mines and minerals in a certificate and the same result must follow from the improper inclusion of such an interest.

Nor can it be claimed for the Crown that it holds a prior "certificate of title granted under this Act". The language of s. 35 of the Act of 1894 in which the folio in the land titles office is spoken of as "constituted by the existing grant or certificate of title of such land" was retained in s. 45 of the statute of 1906, but in s. 37 of R.S.S. 1909, c. 41, the words "grant or" were omitted. This puts it beyond doubt that these instruments are not equivalents and that the registered grant does not by itself constitute a statutory title under the Act to the interests reserved to the Crown. Apart from an express legislative declaration of an indestructible paramount title, the provincial Crown is in the position of

(1) [1954] S.C.R. 427, [1954] 3 D.L.R. 1, 12 W.W.R. 97.

not being able, except by means of a prior certificate or caveat, to protect its reservations from the operation of s. 200.

This interpretation is supported by the general intendment of the statute which treats a grant in fee simple as the controlling interest and the reservations as incidental. By subjecting the Crown to the operation of ss. 67 and 200, the disposal of the fee draws those interests within the effects of error which the statute contemplates and which it subordinates to the legal declaration of ownership contained in the certificate.

The purpose of the new system of land titles was declared in its first enactment as *The Territories Real Properties Act,* 1886 (Can.), c. 26, as being

> to give certainty to the title to estates in land in the Territories and to facilitate the proof thereof, and also to render dealings with land more simple and less expensive.

In the light of that language the Crown has bound itself with the subject to the conclusiveness of the certificate. This cannot be restricted to land which, in the sum total of interests, has been granted out of the Crown, because the reservations within s. 67(*a*) must have been made in the original grant and still subsist in the Crown. And where the language of that clause and of the qualifying declaration is in such general terms, the basic purpose of the statute becomes pertinent to the interpretation. The same pertinency exists in relation to s. 200.

There remains the question of the effect upon ss. 67 and 200 of *The Provincial Lands Act,* now R.S.S. 1953, c. 45, and *The Mineral Resources Act,* now R.S.S. 1953, c. 47, including their amendments. The former, by s. 10, provides that in every disposition of provincial lands the reservations provided for by that Act, *The Mineral Resources Act,* and others shall be implied. "Disposition" is defined in s. 2(4) as

> the act of disposal or an instrument by which that act is effected or evidenced, and includes a Crown grant, order in council, transfer, assurance, lease, licence, permit, contract or agreement and every other instrument whereby lands or any right, interest or estate in land may be transferred, disposed of or affected, or by which the Crown divests itself of or creates any right, interest or estate in land.

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Section 3 of *The Mineral Resources Act* declares that mines and minerals "shall be leased or otherwise disposed of only in accordance with the provisions" of that Act and regulations made under it. The word "disposition" is given the same meaning as in *The Provincial Lands Act.*

These provisions co-exist with those of *The Land Titles Act* and a reconciliation must be made if their language permits it. The former deal with the act or instrument of the Crown disposing of its interests; but it is not by such an act or instrument that the effects of ss. 67 and 200 are brought about; it is by the force of an act of the Legislature; and once an interest of the Crown becomes bound by the conclusiveness of a certificate, that legal result is untouched by those two statutes. If that were not so, the submission by the Crown to ss. 67 and 200 would be limited to interests embodied in certificates of title, which would render s. 67(*a*) meaningless and reduce s. 200 to cases in which the Crown, by dealing in land already brought under certificate, would be bound by that fact alone.

I would, therefore, allow the appeal, set aside the judgments below, and direct the removal from the certificate of the caveat registered on October 9, 1953, as B.G. 5418. There will be no costs.

KELLOCK J.:—The question at issue in this appeal concerns the title to certain mines and minerals reserved to the Crown in the right of Canada by a patent of July 29, 1909, by which the lands, apart from the minerals, were granted to one Burrows. The latter registered his grant on September 2, 1909, and on the same day received a certificate of title under the provincial *Land Titles Act,* 1906, c. 24. By various mesne conveyances the title of Burrows became vested in one Schindler, to whom a certificate of title was issued on June 11, 1929, which certificate had endorsed upon it, by means of a rubber stamp, the words "Minerals Included". On October 4, 1949, Schindler executed a transfer in favour of Joseph and Carl Guber, the predecessors in title of the appellant, to whom a certificate of title was issued on October 29, 1949, bearing the same endorsement.

Ultimately, on January 29, 1951, the Gubers executed a transfer of an undivided one-half interest in the mines and minerals to the appellant, to whom a certificate of title

was issued on February 12, 1954. In the meantime, on March 13, 1951, a caveat had been registered by the appellant, followed on October 9, 1953, by a caveat filed by the respondent on behalf of Her Majesty in the right of the Province against the registration of any instrument affecting title to the said minerals. The present proceedings were brought by the appellant by way of originating notice to determine the mineral title.

Doiron J., the judge of first instance, gave effect to the caveat filed on behalf of the respondent, and ordered cancellation of the certificate of title issued to the appellant, as well as deletion of the endorsement on the certificate of title issued to the Gubers. An appeal by the present appellant was dismissed by the Court of Appeal, Culliton J.A. dissenting.

It is common ground that *The Land Titles Act,* R.S.S. 1953, c. 108, recognizes the registrability of an estate in fee simple in minerals as a subject-matter of distinct ownership, and while the appellant admits that the minerals were never granted by the Crown, it is contended that in dealing with the Gubers with respect to the minerals, the appellant relied and was entitled to rely upon the certificate of title issued to them and that such certificate was "conclusive evidence as against Her Majesty" that they had title by virtue of ss. 67 and 200(1) of *The Land Titles Act.*

The appellant further submits that by reason of the express terms of s. 200(1), the Crown is bound by the statute and that the endorsement is an express declaration within the meaning of s. 67, which provides that:

> 67. The land mentioned in any certificate of title granted under this Act shall by implication and without any special mention therein, unless the contrary is expressly declared, be subject to:
>
> (*a*) any subsisting reservations or exceptions contained in the *original* grant of the land from the Crown; . . .

It is therefore argued that it is not competent to the respondent to assert that there is any "subsisting" reservation of minerals in the Crown. The argument involves the contention that, although the original grant was from the Dominion, title to the reserved minerals passed to the Province under the *Natural Resources Agreement* of 1930, before the issue of the Guber certificate, and that therefore, although the endorsement could not operate as a declaration

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to the contrary with respect to the reservation so long as it was in favour of the Dominion, the Province became precluded by the certificate of title and the operation of s. 200 from asserting any interest in the minerals immediately upon the *Natural Resources Agreement* becoming effective.

In the reference *Re Transfer of Natural Resources to the Province of Saskatchewan* (1), the effect of the 1930 legislation was considered. At pp. 275-6 Newcombe J., who delivered the judgment of the Court, said:

> It is not by grant *inter partes* that Crown lands are passed from one branch to another of the King's government; the transfer takes effect, in the absence of special provision, sometimes by Order in Council, sometimes by despatch. There is only one Crown, and the lands belonging to the Crown are and remain vested in it, notwithstanding that the administration of them and the exercise of their beneficial use may, from time to time, as competently authorized, be regulated upon the advice of different Ministers charged with the appropriate service. I will quote the words of Lord Davey in *Ontario Mining Company v. Seybold,* [1903] A.C. 73, at 79, where his Lordship, referring to Lord Watson's judgment in the *St. Catherines Milling Case* (1888), 14 App. Cas. 46, said
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> "In delivering the judgment of the Board, Lord Watson observed that in construing the enactments of the British North America Act, 1867, 'it must always be kept in view that wherever public land with its incidents is described as 'the property of' or as 'belonging to' the Dominion or a province, these expressions merely import that the right to its beneficial use or its proceeds has been appropriated to the Dominion or the province, 'as the case may be, and is subject to the control of its legislature, the land itself being vested in the Crown.' Their Lordships think that it should be added that the right of disposing of the land can only be exercised by the Crown under the advice of the Ministers of the Dominion or province, as the case may be, to which the beneficial use of the land or its proceeds has been appropriated, and by an instrument under the seal of the Dominion or the province."

Accordingly, the minerals here in question remained throughout vested in the Crown, having been and having remained reserved by the *original* patent. It was "the administration of them and the exercise of their beneficial use" only which was affected. The reservation in the original patent, therefore, remained a subsisting reservation as well after as before the *Natural Resources Agreement.*

For reasons which will appear, I do not find it necessary to decide as to the contention of the appellant that the endorsement became effective as against the Province immediately upon the coming into force of the agreement.

(1) [1931] S.C.R. 263, [1931] 1 D.L.R. 865, affirmed [1932] A.C. 28, [1931] 4 D.L.R. 712, [1931] 3 W.W.R. 488.

Unquestionably, immediately prior to that date the endorsement could have no such effect. I do not think it can be doubted either, that a conveyance by the Dominion would have entitled the grantee to obtain registration of his title notwithstanding the outstanding certificate held by Schindler. To hold the contrary would render virtually nugatory the interest of the Dominion in the minerals by making that interest incapable of realization. It may be that the passing to the Province of the interest of the Dominion in 1930 did not disentitle the Province to registration, but, as I have said, I do not find it necessary, in the present circumstances, to decide the point.

The situation existing on the date when the agreement became effective did not continue. In 1949 there occurred the transfer from Schindler to the Gubers, to whom a certificate of title was issued with the endorsement "Minerals Included". That certificate was issued after the mineral title had been vested in the Province, and the appellant acquired its interest in the lands in reliance upon it. It is to these circumstances that *The Land Titles Act* is to be applied.

The respondent contends in the first place that the declaration contemplated by s. 67 is a statutory one. In my opinion, however, the section is not so limited. A declaration in the certificate itself is sufficient.

The respondent further contends that the words "Minerals Included" are employed in the Land Titles Office in practice only in cases where, in fact, no reservation of minerals at all is contained in the original Crown grant, and that they are inapt as a declaration that a reservation of minerals made in the original grant no longer subsists. I am unable to accept this contention. If the words are capable of the meaning that the original patent did not include a grant of the minerals, s. 200(1) would entitle the appellant to rest on that statement even although the original patent had contained such a reservation. The Province would not be entitled to assert the contrary. The words are, however, in my opinion, equally capable of the construction that the mineral title, although originally reserved, had been subsequently granted by the

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Dominion or by the Province after the latter had acquired it. In either circumstance the appellant would again be protected.

As applied to the certificate of title granted to the Gubers, under which the appellant claims, s. 200(1) plainly provides that it is a complete estoppel against the Province with respect to the express statement which it contains, namely, that the person named in the certificate is entitled to the minerals as against the Province. A person dealing with the lands on the footing of such a certificate would be entitled to assume as against the Province that both the surface rights and the minerals had been granted by the Crown at some earlier stage. This being so, it is not open to the respondent to contend that the minerals had never been brought under the Act.

It is, however, further contended for the respondent that by virtue of *The Provincial Lands Act,* now R.S.S. 1953, c. 45, and *The Mineral Resources Act,* now R.S.S. 1953, c. 47, enacted by the Legislature subsequent to the *Natural Resources Agreement* of 1930, the provincial title was protected. In my opinion this point can be put most forcibly from the standpoint of the respondent by reference to s. 3 of *The Mineral Resources Act, 1931,* c. 16, in the form in which it was enacted in 1939 by c. 14, s. 1, which was prior to the acquisition of any interest by the Gubers. The section reads:

> 3. Mines and minerals which are the property of the Crown, and the right of access thereto, shall be leased or otherwise disposed of *only* in accordance with the provisions of this Act and the regulations made thereunder.

While the verb "dispose" in s. 3 is not defined, the noun "disposition" is defined by s. 2(4) of *The Provincial Lands Act,* 1931, c. 14, (which *The Mineral Resources Act* by s. 2(3) adopts) as meaning, unless the context otherwise requires, the "act" of disposal or "an instrument by which that act is effected or evidenced" and includes "every other instrument whereby lands or any right, interest or estate in land may be transferred, disposed of or *affected*".

While I was at first inclined to the view that the contention of the respondent upon the footing of this legislation was well founded, I now do not think that is so. In view of the clear terms of s. 200(1) of *The Land Titles Act* and

the purpose of that statute, the appellant and other persons dealing with the Gubers were entitled to rely on the certificate, including the endorsement, and to assume that there had been a grant of the minerals.

I do not think the decision of this Court in *The District Registrar of the Land Titles District of Portage La Prairie v. Canadian Superior Oil of California Ltd. and Hiebert* (1), is relevant. In that case the certificate of title contained a reference to the reservation in the original grant, and it was held by the majority of this Court that the relevant legislation required that grant to be read as reserving the minerals.

Nor do I think there is anything in the decision of this Court in *Balzer and Balzer v. The Registrar of Moosomin Land Registration District et al.* (2), which is relevant to the case at bar. That was the case, merely, of an application by a transferee of land to strike out an endorsement on his certificate of title where there was no opposing interest, and where there was no suggestion that any other person had acquired any rights on the faith of the endorsement or any prior endorsement to the same effect.

I would allow the appeal. By agreement there will be no costs.

The judgment of Locke and Nolan JJ. was delivered by

LOCKE J.:—The patent granted to T. A. Burrows for the north-west quarter and the west half of the north-east quarter of section 6 in township 36, range 17, west of the second meridian in Saskatchewan, dated July 29, 1909, reserved to the Crown, *inter alia,* all mines and minerals which might be found to exist therein.

Section 21 of *The Saskatchewan Act,* 1905 (Can.), c. 42, reserved all Crown lands, mines and minerals and royalties incident thereto in the Province to the Crown in the right of the Dominion.

Upon the filing of these letters patent in the appropriate registration district, Burrows became entitled to a certificate of title by reason of the provisions of s. 49 of *The Land Titles Act,* 1906 (Sask.), c. 24. That section, with an

(1) [1954] S.C.R. 321, [1954] 3 D.L.R. 705.

(2) [1955] S.C.R. 82, [1955] 1 D.L.R. 657.

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alteration which is immaterial to the present matter, appeared as s. 41 of c. 41 in the revision of the statutes in 1909.

The certificate issued to Burrows was not made part of the material upon the application but, according to the abstract filed, it was issued on September 2, 1909, and it is common ground that it was in the form prescribed by the statute which appears as Form E in the statute of 1906. That form certifies that the named person is the owner of the estate described in the property in question "subject to the incumbrances, liens and interests notified by memorandum underwritten or indorsed hereon, or which may hereafter be made in the register". No reference as to the reservation of minerals was contained in or endorsed upon the certificate, this being unnecessary by virtue of s. 76 of the Act which, so far as it is relevant, read:

> The land mentioned in any certificate of title granted under this Act shall, by implication and without any special mention therein unless the contrary is expressly declared therein be subject to:
>
> (a) Any subsisting reservations or exceptions contained in the original grant of the land from the crown . . .

Burrows transferred the north-west quarter of section 6 to the Luse Land Company Limited by a transfer registered on September 7, 1909, a certificate of title issuing to the company which contained no reference to minerals. That company transferred the lands to one Alexander by a transfer registered on June 5, 1911, and on that date a certificate of title issued to the transferee. At some unspecified time that certificate was endorsed "Minerals Included", these words being placed upon the certificate by a rubber stamp, immediately following the description of the land, and it appears to have been assumed throughout that this endorsement was made by or on the direction of the Registrar for the Humboldt Land Registration District. That the endorsement was made on that certificate prior to June 11, 1929, appears certain from the fact that in 1926 the land was sold for arrears of taxes and title was thereafter obtained by the tax sale purchaser, Thomas F. Schindler, by whom an application for title which resulted in the issue of the new certificate was filed on November 24, 1928. The new certificate was dated June 11, 1929, and endorsed in the same manner, "Minerals Included", presumably at the time it was issued.

The title was in this state when an agreement between the Dominion of Canada and the Province of Saskatchewan was made dated March 20, 1930, whereby the natural resources were surrendered to the Province. That agreement was confirmed by *The Saskatchewan Natural Resources Act,* 1930 (Can.), c. 41. In view of an argument which has been addressed to us as to the effect of this statute, it should be noted that para. 1 of the agreement, which was confirmed read in part:

> . . . the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Province, and all sums due or payable for such lands, mines, minerals or royalties, shall from and after the coming into force of this agreement and subject as therein otherwise provided, belong to the Province . . .

Thus, the mines and minerals reserved to the Crown in the letters patent thereafter, in the words of the agreement "belonged" to the Province of Saskatchewan.

When *The Land Titles Act* was first enacted as 1906 (Sask.), c. 24, s. 180 which appeared with a group of sections under the sub-heading "Evidence and Procedure" read:

> 180. Every certificate of title granted under this Act shall except:
>
> (*a*) In case of fraud wherein the owner has participated or colluded; and
>
> (*b*) As against any person claiming under a prior certificate of title granted under this Act in respect of the same land; and
>
> (*c*) So far as regards any portion of the land by wrong description of boundaries or parcels included in such certificate of title so long as the same remains in force and uncancelled under this Act;
>
> be conclusive evidence in all courts as against His Majesty and all persons whomsoever that the person named therein is entitled to the land included in the same for the estate or interest therein specified subject to the exceptions and reservations implied under the provisions of this Act.

In 1917 the Act was repealed and re-enacted as c. 18 of the second session of that year, subs. 1 of s. 174 being in the same terms.

The question whether the Crown in the right of the Dominion might have asserted its right to the minerals on the property in question as against Schindler does not arise. The section, it will be noted, does not purport to do anything more than to enact as a rule of evidence that no one, including the Crown, may be heard to dispute the title of the owner named in the certificate, except in certain specified cases. It is in effect an estoppel by statute. If it were

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necessary to determine the matter, it would be my opinion that no such estoppel would have operated as against the Crown in the right of the Dominion.

Following the transfer of the natural resources pursuant to the agreement of 1930, the Province passed *The Provincial Lands Act,* 1931 (Sask.), c. 14, and *The Mineral Resources Act,* 1931 (Sask.), c. 16. These Acts now appear as cc. 45 and 47, respectively, of R.S.S. 1953. As it is contended that the provisions of these statutes affect the question to be determined, their terms must be considered.

By *The Provincial Lands Act* provision was made as to the manner in which lands forming part of the natural resources of the Province might be disposed of. The word "disposition" appearing in the statute is defined as meaning the act of disposal or an instrument by which that act is effected or evidenced and to include, *inter alia,* a Crown grant and every other instrument whereby lands or any right, interest or estate in lands may be transferred or disposed of, or by which the Crown divests itself of or creates any estate or interest in lands. By s. 8 it is provided that provincial lands shall be sold in accordance with the provisions of the Act and the orders and regulations made thereunder. Section 10 provides that there shall be implied in every disposition of provincial lands under the Act or any other Act of the Legislature all reservations provided for in the Act and, *inter alia, The Mineral Resources Act.* Section 14 declares that there is reserved to the Crown out of every disposition of provincial lands under the Act all mines and minerals, whether solid or liquid or gaseous, and that all mines and minerals existing on or under provincial lands shall be disposed of in the manner provided by *The Mineral Resources Act* and regulations made thereunder.

The Mineral Resources Act defines the word "mineral" in a manner including petroleum and natural gas and, by s. 3, provides that mines and minerals the property of the Crown shall be disposed of only in accordance with the provisions of the Act. The word "disposition" is defined as meaning a disposition as defined in *The Provincial Lands Act.*

Nothing was done by the Province from the time of the transfer of the natural resources in 1930 up to the time of the commencement of these proceedings to dispose of or alienate the minerals on the lands in question, the status

of these remaining as it was at the time of the issue of the Crown grant to Burrows, save that the beneficial interest of the Dominion had, as stated, been transferred to the Province.

On October 29, 1949, a transfer from Schindler to Joseph and Carl Guber was registered in the Humboldt Land Titles Office and, on that date, a certificate of title issued endorsed in like manner with the words "Minerals Included".

On January 29, 1951, the Gubers executed a transfer in favour of the appellant of an undivided one-half interest in all mines and minerals, except coal, upon or under the quarter-section for valuable consideration, and on March 13, 1951, the trust company filed a caveat giving notice of its interest. By caveat filed on October 9, 1953, the Registrar gave notice on behalf of Her Majesty in right of the Province of a claim to ownership of the minerals. On February 12, 1954, a certificate of title issued to the trust company pursuant to the transfer from the Gubers, this being made subject to the Registrar's caveat.

That the Gubers and the trust company were purchasers for value without notice of any adverse claim to the minerals is admitted.

The provisions of *The Land Titles Act* which affected the rights of the parties did not differ at any relevant time from the terms of the statute as it appears in the Revised Statutes of 1953 and it will be convenient to refer to the sections as they there appear. Section 66 provides that:

> The owner of land for which a certificate of title has been granted shall hold the same subject, in addition to the incidents implied by virtue of the Act, to such encumbrances, liens, estates or interests as are endorsed on the folio of the register which constitutes the certificate of title, absolutely free from all other encumbrances, liens, estates or interests whatever, except in case of fraud wherein he has participated or colluded and except the estate or interest of an owner claiming the same land under a prior certificate of title as mentioned in section 200.

The implied reservations, including those contained in the original grant from the Crown, which appeared as s. 76 of the statute of 1906 now appear as s. 67 in the Revised Statutes.

Section 180 of the Act of 1906 is now, with an addition which does not affect the present matter, s. 200.

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In view of the provisions of ss. 66, 67 and 200, which must be read together, a person purchasing lands or an interest in land from one who has a clear certificate of title issued under the provisions of *The Land Titles Act* may not safely rely upon a search of the certificate alone, since he is charged with the knowledge that it is issued subject, *inter alia,* to any subsisting reservations or exceptions contained in the original grant from the Crown, unless the contrary is expressly declared. In the present matter, where the Prudential Trust company was interested only in the purchase of an interest in the mineral rights, it was, in my opinion, entitled to rely upon the statement on the face of the certificate that the title included minerals. The terms used were explicit and their meaning free from doubt. In my opinion, the fact that a search of the patent granted to Burrows would have disclosed the reservation does not assist the respondent.

Section 200 declares that the certificate of title and the duplicate certificate shall be conclusive evidence of the title of the person named therein, except, *inter alia,* as to "any portion of the land by wrong description of boundaries or parcels included in such certificate". I mention this since, as the transfer from the Luse Land Company Limited to Alexander conveyed the land alone without any reference to minerals, to describe the interest of Alexander and subsequent transferees as including the minerals might appear to be a wrong description of the parcel of land to which they were entitled as owners. In my opinion, however, this point is concluded as against the Crown by the decision of this Court in *Canadian Pacific Railway Co. Ltd. et al. v. Turta et al.* (1). I see no distinction in this respect between cl. (*c*) of s. 200(1) and s. 44 of the Alberta statute considered in that case.

I am further of the opinion that the provisions of *The Provincial Lands Act* and *The Mineral Resources Act* do not assist the position of the Crown. It is true that the joint effect of these statutes is to provide that lands and mineral rights which are included in the statutory definition of land in the former statute may be disposed of only in the manner provided. The "disposition" defined in *The Provincial Lands Act,* as an examination of that statute and

(1) [1954] S.C.R. 427, [1954] 3 D.L.R. 1, 12 W.W.R. 97.

The Mineral Resources Act discloses, is a disposition by the Crown in right of the Province, and there is no suggestion that any such disposition is involved in the present matter. The appellant's case is simply that by virtue of the provisions of s. 200 the Province is estopped from asserting its claim to the minerals.

The word "land" is defined in s. 2(10) of *The Land Titles Act* as meaning land and every estate or interest therein and mines, minerals and quarries thereon or thereunder. The interest of the Crown in the minerals in question was, therefore, land in respect of which presumably a certificate of title might have issued under the provisions of the Act at the instance of the Crown. Section 85 of *The Land Titles Act,* which first appeared as s. 78A of *The Land Titles Act* of 1938 (c. 20) which repealed the former statute, provides that where a certificate of title is, on the coming into force of the Act, registered in the name of the Crown or is thereafter registered in the name of Her Majesty in the right of the Province of Saskatchewan and includes the mines and minerals which may be found to exist therein, no transfer by the Crown of such land shall include such mines or minerals which remain vested in the Crown. So long as the title to the minerals in question remained in the Crown in the right of the Dominion, no patent was issued in respect of them and nothing done to make such interest subject to *The Land Titles Act.* As indicated, at least since 1938, a certificate of title might have issued to the Crown in the right of the Province upon its application but that has not been done.

For the respondent, it is contended that ss. 66 and 200 relate only to certificates of title issued in respect of land which has been brought under the Act, either on application by the owner named in the letters patent pursuant to ss. 33 *et seq.* in the case of lands for which patents issued from the Crown prior to January 1, 1887, or by the filing of the original letters patent with the Registrar which entitled the owner under s. 48 to the grant of a certificate of title under the provisions of the Act. If this argument could be sustained, neither of these sections could affect the rights of the Province in the circumstances described.

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The contention amounts to this, that s. 200 should be construed as if it read:

> Every certificate of title and duplicate certificate granted under this Act for land which is then or has theretofore been brought under the Act shall, except:—

or to that effect. Section 66 and the concluding sentence of s. 183 would, of necessity, be construed in the same manner.

With respect for differing opinions, I think this construction cannot be supported.

Considering s. 200 by itself, it is stated that the certificate and duplicate certificate referred to are conclusive evidence that the person named is entitled to the land included in the same for the estate or interest specified, subject to the exceptions named. Land is defined in subs. 10 of s. 2 as meaning, *inter alia,* lands of every nature and description and every estate or interest therein. The section is not restricted by its own terms to land which has been brought under the Act but includes an estate or interest granted by letters patent.

That this is the proper interpretation is further supported by the language in which the exceptions are expressed. Thus, where a Registrar has been induced by fraud to issue a certificate of title for land theretofore not subject to the Act, the construction contended for would make exception (*a*) inapplicable. In the same manner, where, by wrong description of boundaries or parcels, land which had not been brought under the Act and for which the existing root of title was a grant from the Crown, or land the title to which remains in the Crown, is included in the certificate, cl. (*c*) would not apply. Nothing in the language of the section itself excludes the application of (*a*) and (*c*) to such cases.

If the history of s. 200 and of the other sections whose construction would be affected if this contention of the Crown were upheld is considered, it appears to me to be fatal to the argument.

Section 200, which appeared as s. 180 when *The Land Titles Act* of Saskatchewan was first enacted in 1906, was not original drafting but was apparently taken, though not *verbatim,* either from s. 62 of *The Territories Real Property Act,* 1886 (Can.), c. 26, which came into force on January 1,

1887, or from s. 62 of *The Real Property Act* of Manitoba, enacted as c. 28 of the statutes of 1885, which came into force on July 1 of that year.

The Manitoba section read in part:

> Every certificate of title granted under this Act, when duly registered, shall (except in case of fraud wherein the registered owner shall have participated or colluded) so long as the same remains in force and uncancelled under this Act, be conclusive evidence at law and in equity as against Her Majesty and all persons whomsoever, that the person named in such certificate is entitled to the land included in such certificate, for the estate or interest therein specified, subject to the exceptions and reservations mentioned in section 61, except as far as regards any portion of land that may by wrong description of boundaries or parcels be included in such certificate when the holder of such certificate is neither a purchaser or mortgagee for value, nor the transferee of a purchaser or mortgagee for value, and except as against any person claiming under any prior certificate of title granted under this Act in respect of the same land . . .

Section 61, so far as it was relevant, was in the same terms as the present Saskatchewan s. 67.

At the time *The Real Property Act* was enacted in Manitoba, the root of the title of all lands in the hands of private owners, with some exceptions such as in the case of the Hudson's Bay Company, was a grant from the Crown by letters patent under the provisions of *The Dominion Lands Act*. The reference, therefore, to "land that may by wrong description of boundaries or parcels be included in such certificate" could not have been intended to be only such land as had been brought under the provisions of *The Real Property Act*. There was no such land on July 1, 1885. The fraud referred to in the case of the first certificate of title issued in respect of the lands could only, of necessity, have referred to fraud in obtaining a certificate for lands held under what was and continues to be known in Manitoba as the old system.

The same situation existed in the territory which now constitutes the Provinces of Saskatchewan and Alberta and the North-West Territories when *The Territories Real Property Act* was passed by Parliament. As has been pointed out, the same language, with variations which do not affect the question, was contained in s. 62 and, at the time that statute was passed, there were no lands in this territory which were subject to any *Land Titles Act*. The Act did not, of course, apply to the Province of Manitoba.

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Since it is, therefore, apparent that the certificate of title referred to in the section in the Manitoba Act and that of the Dominion Act referred to certificates granted in respect of lands which were held by letters patent from the Crown as well as to those which became subject to the Act, I can see no logical reason for giving a different meaning to the same language in s. 200 of the present Saskatchewan Act.

It may be noted that the present s. 66 of the Saskatchewan statute, which appeared as s. 75 in the Act of 1906, was apparently taken from s. 60 of *The Territories Real Property Act,* though an important term of the section in that statute was omitted. As s. 66 of the Saskatchewan Act now reads, the owner of land for which a certificate of title has been granted shall hold the same, subject to the named exceptions, free of all other encumbrances, except in case of fraud wherein he has participated or colluded and except the estate or interest of an owner claiming under a prior certificate of title as mentioned in s. 200. The section in the Dominion statute contained the further exception of "land that is, by wrong description of parcels or of boundaries, erroneously included in the certificate of title". The reason for the omission is not apparent but, as s. 66 must be read in conjunction with ss. 183 and 200, the matter is not of importance. Nothing in s. 66 or s. 75 of the statute of 1906 nor s. 60 of *The Territories Real Property Act* lends any support to the view that the land for which the certificate of title mentioned has been issued includes only land which has been brought under the operation of the Act.

In my opinion, further light is thrown upon the matter by an examination of s. 183. By that section, it is provided that no action of ejectment or other action for the recovery of land for which a certificate of title has been granted shall lie against the owner under this Act, except in the case of, *inter alia,* a person deprived of land by fraud as against the person who through such fraud has been registered as owner, or as against a person deriving title otherwise than as a transferee *bona fide* for value from or through such owner through fraud, a person deprived of or claiming any land included in any grant or certificate of title of other lands by misdescription of such other land or of its boundaries as

against the owner of such other land, and an owner claiming under an instrument of title prior in date of registration where two or more grants or certificates of title have been registered or issued in respect of the same land. The section concludes:

> (2) In any case other than the above, the production of the duplicate certificate of title or a certified copy of such certificate shall be an absolute bar and estoppel to any such action against the person named in such certificate as owner of the land therein described.

There is nothing in the section which qualifies or restricts the meaning to be assigned to the word "land", so that the definition in the statute applies.

This s. 183 appeared as s. 147 of the Act of 1906. That section appears to have been taken from s. 103 of *The Territories Real Property Act*. That section, in turn, appears to have been taken from s. 116 of the Manitoba Act, after deleting words which limited the right by providing that it was not available as against a *bona fide* purchaser for value.

The Manitoba Act was based largely upon the *Real Property Act* of the Province of South Australia, which appeared as c. 11 of the statutes of that Province in the year 1860. The section of that Act from which, obviously, the Manitoba section was taken is s. 118. The reference to misdescription, however, read:

> in the case of a person deprived of any land by reason of a wrong description of any land or of its boundaries.

Section 116(5) of the Manitoba Act and s. 103(*e*) of the *Territories Real Property Act* referred to "the case of a person deprived of or claiming any land included in any grant or certificate of title of other land by misdescription of such other land or of its boundaries". The reason for the changed wording would appear to be that both in Manitoba and in the North-West Territories the title to some of the lands would continue to be letters patent, and, as to others, certificates of title which, for the first time, were authorized. It was apparently thought necessary to refer both to grants and to certificates of title to make it clear that, if land held in either manner was included by misdescription in a certificate of title issued under the Act, the right reserved to the real owner might be enforced by ejectment. The rights reserved by s. 200(*c*) are not, of course, limited to lands the title to which is either letters

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patent or certificates of title but include lands as to which no Crown grant has been made and title to which accordingly remains in the Crown.

In my opinion, the judgment of this Court in *Balzer and Balzer v. The Registrar of Moosomin Land Registration District et al.* (1), does not assist the position of the respondent. That case did not involve the rights of third parties purchasing the lands in good faith or the application of ss. 66 and 200 of *The Land Titles Act,* as was pointed out in the judgment of Kellock J. In the circumstances of that case, the lack of authority of the Registrar to endorse a certificate with the words "minerals in the Crown" was decisive. In the present case, where title has been acquired by a purchaser in good faith and without notice, effect cannot be given to that objection in view of the decision in *Turta's Case, supra.*

I would allow this appeal and direct that the registration of the caveat filed by the Registrar be vacated. By agreement between the parties, no costs should be awarded.

CARTWRIGHT J.:—The relevant facts are set out in the reasons of other members of the Court and in those of the learned justices in the Courts below. Those reasons make it clear that the Crown in the right of Saskatchewan never parted with the title to the minerals within, upon or under the quarter-section in question, which became vested in it as of October 1, 1930, pursuant to statutes of Saskatchewan, 1930, 20 Geo. V, c. 87, and 1931, 21 Geo. V, c. 85, statutes of Canada, 1930, 20-21 Geo. V, c. 41, and 1931, 21-22 Geo. V, c. 51, and the statute of the United Kingdom 1930, 20-21 Geo. V, c. 26, having been previously vested in the Crown in the right of Canada.

There remains for consideration the submission that, notwithstanding the fact that the Crown never parted with these minerals, the appellant has acquired an indefeasible title to an undivided one-half interest therein by reason of the fact that it purchased the same from Joseph Guber and Carl Guber relying upon the certificate of title issued to them on October 29, 1949.

(1) [1955] S.C.R. 82, [1955] 1 D.L.R. 657.

Section 200(1) of *The Land Titles Act*, R.S.S. 1953, c. 108, is as follows:

200.—(1) Every certificate of title and duplicate certificate granted under this Act shall, except:

(*a*) in case of fraud wherein the owner has participated or colluded; and

(*b*) as against any person claiming under a prior certificate of title granted under this Act in respect to the same land; and

(*c*) so far as regards any portion of the land by wrong description of boundaries or parcels included in such certificate of title;

be conclusive evidence, so long as the same remains in force and uncancelled, in all courts, as against Her Majesty and all persons whomsoever, that the person named therein is entitled to the land included in the same for the estate or interest therein specified, subject to the exceptions and reservations implied under the provisions of this Act.

I did not understand counsel to suggest that any of the exceptions (*a*), (*b*), or (*c*) have application in the circumstances of this case.

As a matter of construction I think it clear that the Gubers' certificate of title in terms certifies that they are the owners not only of "the surface" of the quarter-section but also of the minerals in and under it. To hold otherwise would be to give no effect to the words "Minerals Included". It is argued for the respondent that, even if this is the proper construction of the words of the certificate, the appellant's case is not advanced because its title is "subject to the exceptions and reservations implied under the provisions of this Act", which, under s. 67(*a*) include, unless the contrary is expressly declared, "any subsisting reservations or exceptions contained in the original grant of the land from the Crown".

No doubt when the appellant purchased from the Gubers, whether or not it examined the original grant from the Crown, it took subject to the reservation therein contained reading as follows:

. . . reserving all mines and minerals which may be found to exist within, upon or under such lands, together with full power to work the same, and for this purpose to enter upon, and use and occupy the said lands or so much thereof and to such an extent as may be necessary for the effectual working of the said minerals, or the mines, pits, seams and veins containing the same . . .

unless it can be said that "the contrary" was "expressly declared". In my opinion the contrary was expressly declared in the certificate which, construed as I have concluded it should be, stated in terms that the minerals were

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included in the Gubers' title. The certificate is "conclusive evidence . . . in all courts as against Her Majesty and all persons whomsoever"; and, in my opinion, the Crown cannot successfully assert its title to the minerals as against the appellant, not because it has ever parted with that title but because the certificate on which the appellant relied is, by the statute, made conclusive evidence of the rights of the parties. Since the decision of this Court in *Canadian Pacific Railway Co. Ltd. et al. v. Turta et al.* (1), it cannot be doubted that an owner may be deprived of title to his land by the error of a Registrar in issuing a certificate although the error would have been discoverable by a search of the title.

The circumstance that prior to October 1, 1930, the legislation of Saskatchewan may well have been ineffective as regards the rights of the Crown in the right of Canada appears to me to be irrelevant as the certificate upon which the appellant relied was issued in 1949.

Since writing the above I have had the opportunity of reading the reasons of my brothers Rand and Locke and I agree with them.

I would allow the appeal and direct the Registrar to withdraw caveat no. B.G. 5418. Pursuant to the agreement of the parties there should be no order as to costs.

Appeal allowed without costs.

Solicitors for the appellant: MacPherson, Leslie & Tyerman, Regina.

Solicitor for the respondent: The Attorney General for Saskatchewan, Regina.

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(1) [1954] S.C.R. 427, [1954] 3 D.L.R. 1, 12 W.W.R. 97.