EDWARD GORDON WARDLE (*Plaintiff*) ..APPELLANT;

AND

THE MANITOBA FARM LOANS ASSOCIATION and THE GOVERNMENT OF MANITOBA (*Defendants*) ..... RESPONDENTS

1955

*May 27, 30, 31
*Nov. 15

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Real Property—Land Titles—Mines and Minerals, title to—Tax sale lands vested in Crown, revested in Association by statute—"Crown Lands", meaning of—Certificate of title endorsed with reservation—Validity—Manitoba Farm Loans Act, R.S.M. 1940, c. 78, ss. 78, 79—Crown Lands Act, R.S.M. 1940, c. 48, ss. 2(d), 5(d)—The Real Property Act, R.S.M. 1940, c. 178.

The Manitoba Farm Loans Association (respondent) on acquiring the lands in suit in 1934 by an assignment of tax sale certificates, applied to have them brought under *The Real Property Act* (1934, Man. c. 38). The application was granted and a certificate of title issued to it in the usual form. *The Manitoba Farm Loans Act* (1917, Man. c. 33) as then amended, provided by s. 78 that lands to which the Association became so entitled should vest in the Crown in the right of the Province and that the district registrar of any land titles office in which such land was situate should on the request of the Provincial Treasurer issue a certificate of title in the name of the Crown. The Provincial Treasurer made the request and in Sept. 1934 a certificate of title was issued in the name of "His Majesty the King in the right of the Province of Manitoba." In 1937 s. 78 was repealed and a new s. 78 substituted which provided that land to which the Association had become entitled and was vested in the Crown was thereby revested in the Association and might be retransferred by a transfer under the hand of the Provincial Treasurer. Accordingly the Provincial Treasurer executed to the Association a transfer of all the Crown's estate and interest in the land and a certificate of title was issued to the Association in the usual form with the words added by the registrar "Subject to the reservations contained in the Crown Lands Act."

In 1945 the Association by an agreement of sale agreed to transfer its title to the appellant's father and in 1948, upon completion of the payments called for, at the father's request and upon execution of a quit claim deed by the father to the son, transferred the lands direct to the appellant. The transfer recited that the Association was the registered owner of an estate in fee simple in possession subject to the reservations contained in the *Crown Lands Act*. The certificate of title issued the appellant certified him to be seized of a similar estate and subject to a similar reservation.

Held (Kerwin C.J. and Locke J. dissenting): That the lands revested in the respondent Association by s. 78 of *The Manitoba Farm Loans Act* (as amended by 1937 S. of M. c. 15) were not "crown lands" within

*PRESENT: Kerwin C.J. and Rand, Kellock, Estey and Locke JJ.

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the meaning of *The Crown Lands Act*, S. of M. 1934, c. 38, and there was not a disposition of crown lands within the meaning of s. 2(*d*) of that Act. The reference to reservations under *The Crown Lands Act* noted on the certificate of title issued to the Provincial Treasurer was unauthorized and a nullity as were the similar notations entered on the subsequent certificates of title and should be cancelled.

Per Kerwin C.J. (dissenting): The respondent Association agreed to sell the lands "subject to the reservations contained in *The Crown Lands Act*" and that was what the transfer executed by it in favour of the appellant transferred,—and nothing more. The reference to the reservations contained in the Act was sufficient to bring in s. 5(*d*) thereof and the Association never agreed to transfer the mines and minerals and never did transfer them.

Per Locke J. (dissenting): The only question to be determined was the proper construction of the language of the agreement for sale which by its terms showed clearly that the mines and minerals were excluded from the subject matter of the sale. The question as to whether title to the mines and minerals was in the Government of Manitoba or in the Manitoba Farm Loans Association was an irrevelant consideration. The evidence did not disclose a cause of action.

Decision of the Court of Appeal for Manitoba [1954] 4 D.L.R. 572, reversed.

APPEAL from a judgment of the Court of Appeal for Manitoba (1), (Coyne J.A. dissenting) reversing the judgment of Williams C.J.Q.B. in favour of the plaintiff (2).

W. B. Scarth, Q.C., A. W. Scarth and *H. F. Gyles* for the appellant.

A. E. Hoskin, Q.C., F. O. Meighen, Q.C., J. G. Cowan, Q.C. and O. S. Alsaker for the respondents.

THE CHIEF JUSTICE (dissenting):—The dispute in this case is as to the mines and minerals in certain lands in the Province of Manitoba. On February 21, 1945, the Manitoba Farm Loans Association, by a document in writing and under seal, agreed to sell these lands to Gordon Eugene Wardle "Subject to the reservations contained in the Crown Lands Act". The land was being purchased by Wardle for his son, the present appellant, Edward Gordon Wardle, and when the payments under the agreement were completed the father asked the Association to convey the lands directly to the son. The Association consented if the father would

(1) (1954) 13 W.W.R. (N.S.) 49; [1954] 4 D.L.R. 572; (1955) 14 W.W.R. (N.S.) 289; [1955] 2 D.L.R. 23.

(2) (1953) 9 W.W.R. (N.S). 529.

execute a quit claim deed to the appellant. Apparently the quit claim was given although the document has been lost and by a transfer under *The Real Property Act,* dated September 9, 1948, the Association transferred to the appellant all its estate and interest in the lands which had already been described and to which description was added the clause "Subject to the reservations contained in the Crown Lands Act". The transfer was mailed by the Association to the appellant who swore to the affidavit of value on September 11, 1948, and sent the transfer to the Land Titles Office for registration. The District Registrar issued a certificate of title, dated September 13, 1948, certifying that the appellant

> is now seized of an estate in fee simple in possession subject to such encumbrances, liens and interests as are notified by memorandum underwritten (or endorsed hereon) in all that piece or parcel of land known and described as follows,

and then follows the description and the clause "Subject to the reservations contained in the Crown Lands Act".

It was only in 1950 after oil had been discovered in the district and the appellant had made a lease of the oil rights to a third party that the title of the appellant to those oil rights was questioned, and this action was commenced by him on March 12, 1952, against the Association and the Government of Manitoba, under which name the Crown, defined as Her Majesty the Queen in right of the Province of Manitoba, is to be sued under *The Proceedings Against the Crown Act,* c. 13 of the Statutes of Manitoba, 1951. The statement of claim asks:—

(*a*) A declaration of this Honourable Court that the Plaintiff is entitled to all of the gas, oil, petroleum and mineral rights pertaining to or upon, in or under the said lands situate;

(*b*) A declaration that the Plaintiff is entitled as against the Defendant The Government of the Province of Manitoba to said oil, gas, petroleum and mineral rights;

(*c*) A declaration that there exists in favor of the Defendant The Government of Manitoba no reservation as to oil, gas, petroleum and mineral rights affecting said lands;

(*d*) An order that the Defendant The Manitoba Farm Loans Association do convey unto the Plaintiff the said oil, gas, petroleum and mineral rights;

(*e*) Alternatively to (*d*) above, an order that the Defendant The Manitoba Farm Loans Association do execute in favor of the

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Plaintiff such transfer, assignment or document as shall be necessary to clear the Plaintiff's title of the notation "subject to the reservations contained in the Crown Lands Act";

(*f*) Damages;

(*g*) Costs;

(*h*) Such further and other relief as the nature of the case may require or as to this Honourable Court may seem meet.

The Chief Justice of the Queen's Bench, who tried the action, gave judgment (1) declaring that the appellant is entitled to all of the petroleum and natural gas and related hydrocarbons within, upon or under the land and that he was entitled to them as against both defendants and that there exists no reservation in favour of either of the defendants. An appeal by the defendants, the present respondents, was allowed by the Court of Appeal for Manitoba (2) and the action dismissed.

In the view I take of the matter it is unnecessary to detail the various statutes referred to in the judgments below. By the amendment which came into force on April 28, 1933, to the Provincial Act respecting the Association, the lands in question became vested in the Crown since they were acquired by the Association under an assignment dated February 23, 1934, from the Rural Municipality of Wallace of certain tax sales certificates. By an application, dated February 28, 1934, and filed March 3, 1934, the Association applied to bring the land under the operation of *The Real Property Act* and the certificate of title granted upon that application is dated August 7, 1934, and is in the usual form and without the clause "Subject to the reservations contained in *The Crown Lands Act*". This application and certificate were not authorized by the amending statute and on September 13th the Provincial Treasurer, in accordance with s. 78 of that Act, applied for the issue of certificate of title in the name of the Crown, which was issued September 14, 1934, in the name of "His Majesty the King in the right of the Province of Manitoba". In 1937, by a further amendment to the Act respecting the Association, the land was vested in it. On June 18th of that year a transfer was executed by the Provincial Treasurer to the Association of all the Crown's estate and interest in the land, and on September 7, 1937, a certificate of title was issued by the

(1) (1953) 9 W.W.R. (N.S.) 529.

(2) (1954) 13 W.W.R. (N.S.) 49; (1955) 14 W.W.R. (N.S.) 289.

District Registrar to the Association in the usual form but including the words "Subject to the reservations contained in the Crown Lands Act". The old certificate of title, dated 14th September, 1934, was marked cancelled with a notation "Transfer of all except Crown Lands Act Reservations".

I am willing to assume that the Registrar had no authority to insert the clause quoted in the certificate of September 7, 1937, or to cancel the certificate of September 14, 1934, in the manner described, i.e., by inserting the words mentioned, because the Statute of 1937 was sufficient to vest the land in the Association, although, as a matter of record, something additional might be required. However, the Association agreed to sell the lands "Subject to the reservations contained in the Crown Lands Act" and that is what the transfer executed by it in favour of the appellant transferred,—and nothing more. *The Crown Lands Act* as it stood at the date of the agreement was c. 7 of the Statutes of 1934, and by s. 5 thereof

> 5. In the absence of express provision to the contrary therein, there is reserved to the Crown out of every disposition of Crown land
>
> * * *
>
> (*d*) mines and minerals, together with the right to enter, locate, prospect, mine for and remove minerals.

In my view we are not concerned with the question as to whether the agreement or transfer was a "disposition of Crown lands" as defined in s. 2 (*d*) of the Act, because I agree with Mr. Justice Adamson (now Chief Justice of Manitoba), speaking for the majority of the Court of Appeal, that the only question is—What did the appellant purchase? There was no claim for rectification, or anything of that nature, and I think it is quite apparent that the subject of mines and minerals, (or oil), was not present to the mind of the father, in view of the following questions and answers in his evidence:

> Q. I direct your attention, Mr. Wardle, to a clause in the agreement just after the description of land "subject to the reservations contained in the Crown Lands Act." What have you to say to that?
>
> A. Well I didn't have any experience with titles, I thought it was just a natural matter that was in all agreements and titles. I wasn't acquainted with the general regulations regarding that and took it as a matter of course.
>
> Q. You didn't understand it referred to mines or oil?
>
> A. No, it wasn't discussed nor I didn't question it.

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Therefore, the only question which arises is as to the meaning to be ascribed to the clause.

It is pointed out in Vol. 10 of Halsbury, 2nd edit., p. 298, "A reservation may in substance be an exception, as where there is a reservation of part of the thing granted", but in this case we are not concerned with the category in which the clause falls because the reference to the reservations contained in *The Crown Lands Act* is sufficient to bring in s. 5 (*d*) thereof and the Association, therefore, never agreed to transfer the mines and minerals and never did transfer them. It was contended that if paragraph (*d*) of s. 5 is brought in then also the other paragraphs are also included, if applicable to the land in question. It was not suggested that any of these other clauses did apply and I, therefore, say nothing about them.

For these reasons the appeal should be dismissed with costs.

RAND J.:—This action concerns the title to the mines and minerals underlying the west half of sec. 24, township 10, range 28, west of the principal meridian in the province of Manitoba. The lands had been granted in quarter sections by the Dominion in 1886 and 1887 and the grants carried all minerals except gold and silver. In 1932 they were sold for taxes and were bid in by the municipality to which tax sales certificates were issued. They were not redeemed and on February 23, 1934 the certificates were purchased by the Manitoba Farm Loans Association. That organization had been established by *The Manitoba Farm Loans Act,* c. 33 of the statutes of 1917. Its authority to make the purchase and thereafter to deal with the lands as was done was not contested.

S. 78 of that statute, enacted in 1933, provided:—

> Land to which the association has become entitled by or through foreclosure, tax sale proceedings, conveyance, transfer or otherwise is hereby vested in the Crown in the right of the province, and land to which it hereafter in like manner becomes entitled shall thereupon become and be vested in the Crown in the right of the province; and the district registrar of any land titles district in which any parcel of such land is situate shall, on the request of the Provincial Treasurer, issue a certificate of title therefor in the name of the Crown.

The Provincial Treasurer made such a request in respect of the lands in question and a certificate of title was issued

in the name of His Majesty on September 7, 1934. Previously in that year the Association had itself obtained a certificate of title under its tax sales certificates and in the application of the Provincial Treasurer there was recited a certificate by the secretary of the Association that the latter had become entitled to the lands by way of tax sale proceedings.

In 1937 s. 78 was repealed and a substituted provision declared that:—

> 78. (1) Any land to which the association has become entitled by or through foreclosure, tax sale proceedings, conveyance, transfer or otherwise and which vested in the Crown in the right of the province under the section 78 which is repealed and substituted by this Act, is hereby revested in the association and may be reconveyed or retransferred, as the case may be, by conveyance or transfer under the hand of the Provincial Treasurer and no seal shall be required on any conveyance or transfer.
>
> * * *
>
> (3) Any such conveyance or transfer shall be conclusive evidence that the land described therein is land which hereby revests in the association without further or other proof thereof.
>
> (4) Any lands vested in the Crown by virtue of section 78 which is repealed hereby and which may have been sold under an agreement for sale or leased under the authority conferred by section 79 repealed hereby, shall be deemed to have been sold or leased in the name of the association.

To be "hereby revested in the association" means, as I interpret the section, that the beneficial ownership of the defaulting taxpayer passed back to the Association; the conveyance or transfer by the Provincial Treasurer seems to have been a formality operating on the bare legal title for the purpose of conforming to *the Real Property Act.*

In fulfilment of the section, a considerable number of parcels of land were included in a transfer executed by the Provincial Treasurer among which was the west half of sec. 24. By the instrument, given "in consideration of Bill No. 93-1937 Session—", His Majesty transferred to the Association "all His estate in the said pieces of land". The descriptions of the parcels were of the interest or estate held by the defaulting owners and in many instances they included a reference to reservations to the Crown contained in the original grant. This is significant when it is remembered that the fee, including all Crown reservations, was at the time of the enactment of 1937 vested in the Crown, and it can only mean that where reservations had been originally made they were intended to be retained, and

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where they had not been, they were not. The item for the west half of sec. 24 contained no reference to reservations.

I am unable to agree that the revesting in the Association by the amending s. 78 was a "disposition of Crown land" within s. 5 of *The Crown Lands Act* which, in the case of such an act, in the absence of an express provision to the contrary, reserved the mines and minerals to the Crown. The definition of "disposition" in s. 2(*d*) declared it to include

> . . . every act of the Crown whereby Crown lands or a right, interest or estate therein are granted, disposed of or affected or by which the Crown divests itself of or creates a right, interest or estate in land or permits the use of land; and the words "dispose of" shall have a corresponding meaning;

The key words are "act of the Crown"; but the revesting of lands by statute is not such an act.

The word "revesting" indicates that the object of the amendment was to restore the prior condition of title. It was in this view that the parcels of land transferred back to the Association were described as stated. For some reason, which we are not called upon to seek, a new policy of dealing with the lands was adopted. One reason may be mentioned to be rejected, that the vesting was for the purpose of bringing lands carrying minerals in their private title under the operation of s. 5 of *The Crown Lands Act* in subsequent dispositions. This is negatived by the repeal of the vesting and the statutory restoration of title. In these circumstances, the title in 1937 vested in the Association by the direct operation of the statute, completed by the transfer executed by the Provincial Treasurer, was a fee simple.

But the meaning and effect of the phrase "subject to the reservations contained in *The Crown Lands Act*" in the agreement of sale in 1945, and the certificate of title issued to the purchaser in 1948, remain to be considered. The reservations of s. 5 of *The Crown Lands Act* can be summarized shortly. Item (A) reserves a strip of land 1½ chains in width from ordinary high water where the land extends to the sea or navigable water or from the boundary where it touches another province or the United States; (B) reserves the public right of mooring boats and vessels where the land borders navigable waters; (C) provides for the reservation

of the bed of a body of water below ordinary high water mark and the public right of passing over a portage or trail in existence at the date of the disposition; (D) reserves mines and minerals; (E) reserves the right to and the use of the land necessary for the protection or development of adjacent water power; (F) the power to raise or lower the levels of a body of water adjacent to the land, subject to the payment of compensation. So far as the facts appear, none of these could be effective except (D) and they are not of the character to be reserved ordinarily by a private person or a corporation acting in its own interest and not representing the Crown.

The Court of Appeal appears to have been influenced by what, at first sight, seems to be an implication of the description of the land sold, that the purchaser was to receive the fee only as diminished by those items: but the reasonable construction of the language, to the benefit of which the purchaser is entitled, is that of their subtraction from the fee by operation of the statute and not by force of the contract or transfer: the reference to the statute is not a descriptive incorporation of the items for the purpose of an affirmative reservation. Their inclusion, on the part of the Association, resulted from a mistake of law and there is no evidence that the purchaser had any view or belief about it at all. It is not the case of a common mistake of the parties on a matter of law or fact fundamental to the contract. A unilateral misconception cannot here charge the conscience of the purchaser and the case must be dealt with on the basis of the strictly legal position.

A "reservation" of minerals is an exception, a subtraction from the larger content of the property described. Neither the word "reservation" nor "exception", often used interchangeably, is limited to its strict legal signification and the meaning of the expression in which it is used is to be gathered from the context. In some cases of a reservation, such as a *profit à prendre,* easement or other privilege, a regrant is implied even to a third person: *Wickham* v. *Hawker* (1). But the language here does not admit of that implication; it is not a case of "reserving" anything to the Crown: the words are "subject to" and these do not carry the meaning

(1) (1840) 7 M. & W. 63; 151 E.R. 679.

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of an original reservation as between the parties: it is rather a reference to a precedent operation of the statute, whatever that may have been.

The cognate expression as used with reference to Crown grants, "subject to the reservations contained in the original grant from the Crown", has become commonplace in Western Canada. There has been such an extensive retention of minerals by the Crown that the phrase is ordinarily contained in the standard forms of contract. It is used as an abbreviation describing the actual or possible withholding from a fee simple by reservation or exception as a protection to the vendor. If there happens to have been no reservation in an original grant, the entire fee passes.

A reference to statutory reservations is of the same nature. If the statute has operated so as to retain interests in the Crown, the clause protects the vendor: if it has not, the fee goes to the purchaser. The clause safeguards the vendor; it does not constitute a provision that, regardless of the operation of the statute, these limitations of the fee shall be effective either to the Crown or the Association by force of the contract.

It was urged by Mr. Hoskin that the Association was an agent of the Crown, and in that capacity it could effectuate the reservations of the statute. On this assumption the transfer by the Provincial Treasurer to the Association would not be a disposition since no beneficial interest would have passed out of the Crown. But the statute does not lend support to that contention. The Association, no doubt, bears the stamp of a public corporation, but it is a legislative creation with specified and limited objects. In many respects it is subject to governmental control; but these are powers which, with those given the corporation, make up the total functioning contemplated by the legislature. I find nothing to warrant the view that in administering the lands to which it became entitled it was acting as an agent or *alter ego* of the Crown; the statutory provisions regulating the relations between the Crown and the Association and the treatment of title are inconsistent with that relationship. When the title was in the Crown, the Association administered for and in the name of the Crown; but the fact and mode of restoration to the original

situation of title indicates an unmistakable intention to restrict the government's relations to those specifically provided in the Act.

It was also argued by Mr. Hoskin that at the outset there is the existence of two certificates of title, one embodying the reservation and the other the remaining interests of the fee. But the entry on the original certificate in the name of the Crown, issued upon the request of the Provincial Treasurer in September, 1934, was made by the Registrar of Land Titles as what he considered to be a legal consequence of the application of s. 5 of *The Crown Lands Act* to the revesting by the statute, followed by the transfer executed by the Provincial Treasurer. S. 5 effected no such reservation and there was no legal foundation for the endorsement. It, therefore, was improperly entered on the certificate of the Crown, and, as the Chief Justice of the King's Bench held, the entry is a nullity. There is, then, no conflict between the certificates. The title of the purchaser to the lands under the certificate issued to him in 1948 is not subject to the reservations specified in s. 5 of *The Crown Lands Act;* certificate No. 61305 must be read with the words of reference to that statute struck out: and the endorsement on certificate No. V-4338 of the reservations under The Crown Lands Act is without validity.

I would, therefore, allow the appeal and restore the judgment at trial, amending the latter, however, by adding thereto the direction to cancel the reference to the reservations under *The Crown Lands Act* in certificates Nos. V-4338, V-5208 and 61305. The appellant will have his costs in both courts.

KELLOCK J.:—This appeal is concerned with the title to the mines and minerals in certain lands described in an agreement of sale of the 21st of February, 1945, between the respondent Farm Loans Association and Gordon Eugene Wardle, as well as in a subsequent transfer dated September 13, 1948, to the appellant, and the certificate of title issued to the appellant on the same date.

The lands, as described in the agreement of sale were:

The West Half of Section Twenty-four in Township Ten and Range Twenty-eight, West of the Principal Meridian in Manitoba.

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This is followed by the sentence

> Subject to the reservations contained in the Crown Lands Act.

The original purchaser, having completed his payments under the agreement, executed a quit claim deed to the appellant, in whose favour the respondent Farm Loans Association executed the above-mentioned transfer. This transfer recites the Association to be the registered owner of "an estate in fee simple in possession" in the lands described as in the agreement of sale and transfers to the appellant all its estate and interest in the "said piece of land." The certificate of title, dated the 13th day of September, 1948, certifies the appellant to be seized of an estate in fee simple in possession of the land similarly described, the sentence "Subject to the reservations contained in the Crown Lands Act" being also included.

In order to appreciate the nature of the interest of the respondent Association in the land at the time of the execution of the above-mentioned documents, it is necessary to refer to certain special legislation enacted by the legislature of Manitoba. By amendment to the "Manitoba Farm Loans Act", c. 13 of the Statutes of 1933, s. 78, it was enacted that

> Land to which the association has become entitled by or through foreclosure, tax sale proceedings, conveyance, transfer or otherwise is hereby vested in the Crown in the right of the province, and land to which it hereafter in like manner becomes entitled shall thereupon become and be vested in the Crown in the right of the province;

The section authorized the district registrar of land titles, on request of the Provincial Treasurer, to issue a certificate of title in the name of the Crown.

S. 79 is also important in that it provides that all land vested in the Crown by the Act should nevertheless continue to be administered by the respondent Association in its own name under the provisions of the Act, and that the Association should have the same powers as to such administration of the land *as if it had continued the owner,* including power in the name of the Crown to sell, assign, convey, transfer and otherwise dispose of the land or any estate or interest therein and to execute and deliver in the name of the Crown all necessary conveyances, transfers, agreements and documents. There is no dispute that prior to this legislation the title of the respondent Association extended to the minerals. This title accordingly passed to the Crown by virtue of the statute.

Subsequently, on the 17th of April, 1937, the legislature, by c. 15, repealed the amendments of 1933 and enacted new provisions. S. 78, s-s. (1), provides that any land to which the Association had become entitled and which had vested in the Crown under the repealed section "is hereby revested" in the Association and may be reconveyed and retransferred by instrument under the hand of the Provincial Treasurer. S-s. (3) enacts that any such conveyance or transfer shall be conclusive "evidence" that the land described therein is land which "hereby revests in" the Association.

It will thus be seen that it was the statute itself which "revested" the lands in the Association, the conveyance of the Provincial Treasurer being permissive and merely constituting evidence of such revesting. Title to the minerals was, of course, as much "revested" in the Association by the legislation as were the surface rights. This result could not in any way be affected by any error or insufficiency in any transfer by the Provincial Treasurer—and there was none—or in any certificate of title.

The lands with which we are here concerned were acquired by the respondent Association under an assignment by the Rural Municipality of Wallace of a tax sale certificate dated February 23, 1934. Accordingly, by force of the statute of 1933, they immediately became vested in the Crown. The issue on August 7, 1934, of a certificate of title to the Association is an irrelevant circumstance. It was not authorized by the statute. On the 13th of September following, the Provincial Treasurer, in pursuance of s. 78 of the Act of 1933, applied for the issue of a certificate of title in the name of the Crown, which issued the following day.

Upon enactment of the legislation of 1937, the Provincial Treasurer, pursuant to s. 78, s-s. (1), executed a transfer on the 18th of June, 1937, to the respondent Association of

> The West Half of Section Twenty-four in Township Ten and Range Twenty-eight West of the Principal Meridian in the Province of Manitoba

simpliciter, in accordance with the description in the certificate of title issued to the Crown on the 14th of September, 1934, and by the transfer, the Crown transferred to the Association "all its estate and interest" in the said lands

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without reservation. This, of course, was in accord with the statute, which made no reservation of minerals to the Crown.

The district registrar, however, in issuing the certificate of title to the respondent Association on the 7th of September, 1937, inserted the words "Subject to the reservations contained in the Crown Lands Act", in the evident belief that the last mentioned statute applied. The question is as to the effect, if any, of this language.

The Crown Lands Act was enacted on the 29th of March, 1934, as c. 7 of the Statutes of that year. By s. 5, it is enacted that, in the absence of express provision to the contrary therein, there is reserved to the Crown out of every "disposition" of "Crown land"

> (*d*) mines and minerals, together with the right to enter, locate, prospect, mine for and remove minerals;

S. 2, so far as material, reads as follows:

> 2. In this Act, *unless the context otherwise requires,* the expression
> (*b*) "Crown lands" includes land, whether within or without the province, vested in the Crown, and includes "provincial lands" whenever that expression is used in an Act of the Legislature;
> (*d*) "Disposition" includes every act of the Crown whereby Crown lands or a right, interest or estate therein are granted, disposed of or affected or by which the Crown divests itself of or creates a right, interest or estate in land or permits the use of land; and the words "dispose of" shall have a corresponding meaning;

While the definition in para. (*b*), taken alone, would, no doubt, include the lands vested in the Crown under the special legislation of 1933, it is to be observed that the expression "Crown lands" as used in the Act of 1934 is only to include lands as described in the paragraph "unless the context otherwise requires". For reasons which I proceed to give, the context of the statute, in my opinion, renders it abundantly plain that the statute has no application to the lands which the legislature had made the subject of the special Farm Loans legislation in 1933 and subsequently in 1937 and 1939.

By s. 3 of *The Crown Lands Act,* a branch of the Department of Mines and Natural Resources was established, to be known as the Lands Branch, under the control of the Minister, through which he was required to manage and administer "Crown Lands". The Minister referred to was (s. 2(*f*)) the Minister of Mines and Natural Resources "or

such member of the Executive Council as is appointed *to administer this Act.*" By s. 9, also, the Minister was to have not only the control and management of "Crown lands" but the "disposition" thereof and he was to execute all documents evidencing any "disposition" (s. 22).

Under the *Farm Loans Act* of 1933, however, although the land to which the Association had become or might become entitled became vested in the Crown, nevertheless by s. 79, as already mentioned, the land was to continue to be administered by the Association in its own name *under the provisions of that statute* and the Association was to have the same powers as to such administration as if it had continued *the owner,* including power "in the name of the Crown" to sell, assign, convey, transfer and otherwise dispose of the land and to execute and deliver all documents with relation thereto." It is, in my opinion, quite impossible that the same land could be subject at one and the same time to the provisions of both the *Farm Loans Act* and the *Crown Lands Act* and no such situation could have been in the contemplation of the legislature. The Farm Loans legislation is special legislation with respect to the lands thereby dealt with and although such lands from 1933 to 1937 or thereafter were Crown lands in the sense that they were the property of the Crown, they were not "Crown lands" within the meaning of the *Crown Lands Act.* Other provisions of the last mentioned statute emphasize this.

As already pointed out, s. 9 gives to the Minister of Mines and Natural Resources the control and management of "Crown lands" and of the "disposition" thereof. It is contended for the respondents that "disposition", as defined by s. 2(*d*), includes the revesting of the lands in the respondent Association by the statute of 1937. In the face of s. 9, however, this is an impossible contention. By no stretch of language can the statute of 1937 be brought within the scope of s. 9. While no doubt the statute did dispose of the lands, it was not a "disposition" with which the Minister of Mines and Natural Resources had anything to do, with which "dispositions" alone the *Crown Lands Act* is concerned. Neither the legislation of 1937 nor the transfer executed by the Provincial Treasurer on the 18th of June, 1937,

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pursuant to that legislation, were in any sense ever within "the control and management" of the Minister of Mines and Natural Resources.

Moreover, it is impossible, in my opinion, to bring the statute of 1937 within the words "act of the Crown" in s. 2(*d*), as the respondents contend. By s. 2(*a*)

(*a*) "Crown" means His Majesty the King, in the right of the province,

and there is no context in the statute affecting or enlarging this language.

The statute opens with the words

His Majesty, by and with the consent of the Legislative Assembly of Manitoba, enacts as follows:

Accordingly, the statute itself differentiates between the Crown and the Legislative Assembly, the statute, as in the case of that of 1937, being the concurrent act of both, i.e., of the Legislature; *The Manitoba Act,* 33 Vic., c. 3.

It is therefore plain, in my view, that the context of the Crown Lands Act itself "otherwise requires" the exclusion from the operation of that statute of the lands here in question, any and all dealing therewith being governed by the special Farm Loans legislation to which I have referred. S. 5 of the Act of 1934 had, therefore, no relation to these lands and the transfer from the Crown to the respondent Association executed by the Provincial Treasurer pursuant to the legislation of 1937 on the 18th of June of that year became, by force of s. 78(3) of that legislation, "conclusive evidence" of the revesting of the land in the Association, including the minerals. The transfer itself did not purport to operate otherwise.

That this is the correct construction of the legislation is, in my opinion, strikingly emphasized by the amending legislation of 1939 as contained in c. 23 of the Statutes of that year, entitled "An Act to Consolidate and Amend the *Manitoba Farm Loans Act and to provide for Realizing on the Assets of the Association*". By s. 2(d) of the statute, land is defined to *mean* "land . . . and all mines, minerals and quarries unless specially excepted." The section does not contain the words "unless the context otherwise requires" as in the case of s. 2 of the *Crown Lands Act.* S. 28, s-s. (1), provides that "any" land acquired by the Association "shall" be disposed of by the Board at the

earliest favourable opportunity at such price and interest rate and upon such terms and conditions as the Board may approve. It would be remarkable if, as the respondents contend on the footing that the respondent Association became, after the date of this legislation, the mere agent of the Crown, the legislature should have required it to dispose at the earliest favourable opportunity of its land including the minerals, and yet, at the same time, that the minerals in all the land of the Association should, by force of s. 5 of the *Crown Lands Act,* be retained in the ownership of the Crown. In my opinion, such a construction would reduce the legislation to nonsense. Properly construed, the two statutes may stand together but operating in quite different spheres.

Accordingly, at the time of the agreement of sale of the 21st of February, 1945, the land here in question, including the minerals, was vested in the respondent Association and neither the words "Subject to the reservations contained in the Crown Lands Act" inserted by the registrar in the certificate of title issued to the respondent on September 7, 1937, nor the failure of the registrar to cancel in full the certificate of title previously issued to the Crown under the Act of 1933, affected the title of the respondent. These entries were and are, in my opinion, a nullity; *Balzer* v. *District Registrar* (1).

It is in these circumstances that the question arises as to the effect of the words "Subject to the reservations contained in the Crown Lands Act" in the agreement of sale of February, 1945, and the subsequent transfer. In the view of Adamson J.A., now C.J.M., who delivered the judgment of the majority in the Court of Appeal, their effect was to incorporate into these documents s. 5 of the *Crown Lands Act.* Even so, neither that section nor the statute in which it is found effect a reservation of minerals to the Crown in the case of an instrument which does not constitute a "disposition" of "Crown lands" within the meaning of that statute. The quoted language, which is to be construed *contra proferentem* is, in relation to the circumstances here in question, ineffective to produce the result for which the respondents contend, which, if it had been intended in fact, could have been effected by very simple language.

(1) [1955] S.C.R. 82.

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It may be pointed out that the respondents expressly plead that although the respondent Association did not own the minerals at the time of the agreement of sale and transfer, the appellant received from the Association "a conveyance of the whole of its interest in the said lands." As to the extent of that interest, the respondents were, as I have shown, mistaken, but the pleading clearly shows that the parties were dealing with regard to that entire interest.

I would, therefore, allow the appeal and restore the judgment at trial, amending the latter, however, by adding thereto a direction to cancel the reference to the reservations under *The Crown Lands Act* in certificates Nos. V-4338, V-5208 and 61305. The appellant will have his costs in both courts.

ESTEY J.:—The appellant (plaintiff) in this action asks a declaration that he is entitled to the gas, oil, petroleum and mineral rights pertaining to, or upon, in, or under the W½ 24-10-28 W.P.M. in Manitoba.

The Manitoba Farm Loans Association (hereinafter referred to as the Association), as vendor, sold to Gordon E. Wardle, as purchaser, under an agreement for sale in writing dated February 21, 1945, the above half section and concluded the description thereof with the words "subject to the reservations contained in the Crown Lands Act."

When Gordon E. Wardle had paid the purchase price he requested the Association to transfer the half section to his son, Edward G. Wardle, and, upon receipt of a quit claim deed from the vendor, Gordon E. Wardle, the Association issued the transfer to Edward G. Wardle, the appellant. This transfer to the appellant included the words "subject to the reservations contained in the Crown Lands Act." The appellant duly registered this transfer in the Land Titles Office and pursuant thereto Certificate of Title No. 61305 dated September 13, 1948, was issued to the appellant and concluded with the words "subject to the reservations contained in the Crown Lands Act."

In order to appreciate the respective contentions raised in this litigation it is necessary to study the legislation affecting this land and to understand how the words "subject to the reservations contained in the Crown Lands Act" came to be noted on the title thereof. The Association acquired

the above-mentioned half section by virtue of an assignment of tax sale proceedings in respect to this half section from the Rural Municipality of Wallace in the Province of Manitoba and, pursuant thereto, became the registered owner thereof under Certificate of Title dated August 7, 1934, and numbered V4319 issued under *The Real Property Act* (R.S.M. 1940, c. 178 and amendments thereto).

The respondent Association was incorporated by act of the Province of Manitoba in 1917 (S. of M. 1917. c. 33). This statute was consolidated in 1924 (S. of M. 1924, c. 71) and amended in 1933 (S. of M. 1933, c. 13) by adding ss. 78 and 79, which "vested in the Crown in the right of the province" the land which it had or would thereafter become entitled to "by or through foreclosure, tax sale proceedings, conveyance, . . . " and further that "the district registrar of any land titles district in which any parcel of such land is situate shall, on the request of the Provincial Treasurer, issue a certificate of title therefor in the name of the Crown."

The District Registrar, upon receipt of a request made under s. 78 of the 1933 amendment by the Provincial Treasurer in respect to the half section here in question, issued, in the name of His Majesty in the right of the Province of Manitoba, Certificate of Title No. V4338. There is no question but that at that time the land, including the mines and minerals, under that Certificate of Title, was vested in the Crown.

In 1934 the Legislature of Manitoba enacted *The Crown Lands Act* (S. of M. 1934, c. 7), s. 5 of which (effective, so far as relevant hereto, as of March 6, 1934) provides, in part, as follows:

> 5. In the absence of express provision to the contrary therein, there is reserved to the Crown out of every disposition of Crown Land
>
> * * *
>
> (*d*) mines and minerals, together with the right to enter, locate, prospect, mine for and remove minerals.

In 1937 *The Manitoba Farm Loans Act* was further amended (S. of M. 1937, c. 15) and ss. 78 to 81, as enacted in 1933, were repealed and new ss. 78 and 79 were enacted. The relevant portion of s. 78 reads as follows:

> 78(1) Any land to which the association has become entitled by or through foreclosure, tax sale proceedings, conveyance, transfer or otherwise and which vested in the Crown in the right of the province under the

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section 78 which is repealed and substituted by this Act, is hereby revested in the Association and may be reconveyed or retransferred, as the case may be, by conveyance or transfer under the hand of the Provincial Treasurer and no seal shall be required on any conveyance or transfer.

It may be pointed out that, notwithstanding that the land was vested in the Crown and title issued in the name of the Crown, throughout the Association has had the responsibility of administering the land.

It is the contention of the appellant that, notwithstanding the terms of the agreement for sale, the transfer and the Certificate of Title issued to him, he is, and has at all times relevant hereto been entitled to the mines and minerals. The respondents, on the other hand, contend that the revesting of the land in 1937 was subject to the provisions of s. 5 of the *Crown Lands Act*, under which the mines and minerals remained in the Crown; in effect, therefore, that Certificate of Title in the name of the Crown numbered V4338, dated September 14, 1934, has remained outstanding with respect to the mines and minerals and that the Certificate of Title issued to the Association by virtue of the revesting in 1937, being Certificate of Title No. V5208, dated September 7, 1937, is in respect to the land other than mines and minerals.

It would, therefore, appear that it is first essential to determine the meaning and effect, in the agreement for sale of February 21, 1945, of the words "subject to the reservations contained in the *Crown Lands Act*." If that statute had no application to the half section here in question it must follow that in this agreement for sale these words are mere surplus and without meaning.

The Legislature, in enacting the amendment of 1937, made no reference to the *Crown Lands Act*. While such an omission is not conclusive, its significance is emphasized as one examines the intent and purpose of the Legislature in the enactment of the 1937 amendment. The statutory revesting therein provided for is followed immediately by a provision for a reconveyance or retransfer, which can only be for the convenience of the parties and to facilitate the keeping of the records in the Land Titles Offices. This reconveyance or retransfer is effected, not by any action on part of the Crown, as that phrase is usually used in relation

to the transfer of land, but rather by a statutory designation of the Provincial Treasurer as an agent of the Legislature to execute these documents. It is such a designation as that discussed by Sir Lyman Duff in *Lake Champlain and St. Lawrence Ship Canal Co.* v. *The King* (1).

Moreover, that the Legislature intended the purpose of the 1937 amendment should be effected separate and apart from the provisions of the *Crown Lands Act* is further evidenced by a reference to the provisions of both statutes. In my view it was never intended that the statutory revesting effected by the 1937 amendment should constitute a "disposition" within the meaning of the *Crown Lands Act*. The word "disposition" in the latter Act is defined in s. 2(*d*) to include "every act of the Crown whereby Crown lands, or a right, interest or estate therein, are granted, disposed of . . . " The "Crown" is defined by s. 2(*a*) of that statute to mean "His Majesty the King in the right of the province." Under this statute it is contemplated that the Crown is acting as Lord Macnaghten, speaking on behalf of the Privy Council, stated:

> The proper meaning of the expression "grant from the Crown" in the case of a land grant is a conveyance by Letters Patent under the Great Seal and, although, of course, Crown lands may be transferred to a subject by Act of Parliament, such a transfer would not ordinarily or properly be described as "a grant from the Crown." *Rex* v. *C.P.R.* (2).

This distinction expressed by Lord Macnaghten emphasizes the view that the Legislature, in enacting the amendment of 1937 under which the land was vested in the Association, was proceeding upon a basis entirely different from any disposition of land contemplated under the *Crown Lands Act*. This conclusion is not affected by the fact that the "Crown" is given a more extended meaning in *District Registrar Land Titles, Portage la Prairie* v. *Canadian Superior Oil of California Ltd. and Hiebert* (3).

In view of the foregoing, the question arises how did this notation "subject to the reservations contained in the Crown Lands Act" come into existence in reference to this half section. As already pointed out, when the Provincial Treasurer, acting pursuant to the amendment of 1937, executed a transfer dated June 18, 1937, reconveying the lands to

(1) (1916) 54 Can. S.C.R. 461 at 471. (2) [1911] A.C. 328 at 334.
(3) [1954] S.C.R. 321.

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the Association he included no reservation with respect to mines or minerals, nor any reference to the *Crown Lands Act*. When, however, this transfer was placed in the Land Titles Office the Registrar, under date of September 7, 1937, issued to the Association duplicate Certificate of Title No. V5208 in respect of this half section and he added thereon "subject to the reservations contained in the Crown Lands Act." Neither the legislation already referred to nor any legislative provision to which our attention has been directed justified this notation by the Registrar in respect to this half section. The position with respect to that notation is similar to that dealt with in *Balzer* v. *Registrar of Moosomin Land Registration District et al* (1), as well as other authorities that might be cited with respect to the removal of unauthorized notations upon Certificates of Title under the Torrens system. Such a notation, where the rights of third parties are concerned, may be important, but where, as here, all the parties are before the Court and third party rights are not in issue this notation must be regarded as an error which, as between the parties, is entirely ineffective and may be corrected.

This was the position of the title when the agreement for sale dated February 21, 1945, was made between the Association and Gordon E. Wardle. The position of the appellant, who is in the identical position of his father and has been so treated throughout this litigation, is not that the agreement for sale should be rectified, but that at all times relevant hereto the reservation here under discussion, as it appeared in the agreement, was meaningless and of no effect.

The position here is quite different from that in *Knight Sugar Co. Ltd.* v. *Alberta Railway and Irrigation Co.* (2). There the Privy Council held that the agreements for sale were merged in the transfers under the *Alberta Land Titles Act*. This is not a case where the purchaser has accepted a transfer of land on terms different from those contained in his agreement for purchase, but rather a case where the purchaser's contention is that the agreement and consequent transfer are to the same effect and asks that they be given effect to according to their true intent and meaning, or, as

(1) [1955] S.C.R. 82. (2) [1938] 1 W.W.R. 234.

otherwise put, the contention is that the reservation in the agreement for sale was, as between the parties, never effective.

The position is, therefore, that the appellant brings into Court the Association and the Government of Manitoba, being the only parties concerned, and asks, as already stated, that the Association be compelled to transfer to him the mines and minerals on the basis that the act of the Registrar in inserting the reservation was unauthorized. If, as already intimated, there were intervening rights of third parties, which would require a consideration of relevant provisions of the *Real Property Act,* the position might be entirely different. That, however, is not the position here and, in my view, the appellant's action should be allowed.

It is contended on behalf of the respondents that since the enactment of *The Manitoba Farm Loans Act* in 1939 (S. of M. 1939, c. 23), effective as of May 1, 1938, the Association has been but an agent of the Crown. In support of this it was pointed out that the Association no longer engaged in the lending of money, that in respect of the borrowing of money and other activities it was controlled by Order in Council and that the statute as a whole looked to the winding up of the Association. It, however, cannot be overlooked that the Association continued as a corporate body with the power of acquiring, holding and alienating property and, in particular, might make advances to purchase seed grain and generally lease and dispose of any land acquired by the Association "at the earliest favourable opportunity . . . at such price and interest rate and upon such terms and conditions as the Board may approve." I am, therefore, of the opinion that the degree of control here exercised was not sufficent to make the Association an agent of the Crown within the meaning of *City of Halifax* v. *Halifax Harbour Commissioners* (1); *Oatway* v. *The Canadian Wheat Board* (2); *Regina Industries Ltd.* v. *City of Regina* (3); as well as other authorities to the same effect.

With great respect to the learned trial judge, it would seem that this is a proper case in which the Court should make the corrections contemplated by s. 159 of the *Real Property Act.* I am, therefore, of the opinion that the

(1) [1935] S.C.R. 215. (2) (1945) 52 Man. R. 283.
(3) [1947] S.C.R. 345.

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appeal should be allowed and that the judgment of the learned trial judge should be restored, with additions directing that on Certificate of Title dated September 14, 1934, and numbered V4338 the endorsement, stating that the transfer to the Manitoba Farm Loans Association be "all except Crown Lands Act reservations," be deleted and, further, that the words "subject to the reservations contained in the Crown Lands Act," where they appear on Certificate of Title dated September 7, 1937, and numbered V5208, and on Certificate of Title dated September 13, 1948, and numbered 61305, be deleted; the appellant to have his costs throughout.

LOCKE J. (dissenting):—This is an appeal from a judgment of the Court of Appeal for Manitoba by which the appeal of the respondents from a judgment delivered by the Chief Justice of the Queen's Bench in favour of the present appellant was allowed and the action dismissed. Coyne J.A. dissented and would have dismissed the appeal.

On February 21, 1945, the respondent, the Manitoba Farm Loans Association, entered into an agreement in writing to sell the west half of Section 24 in Township 10 and Range 28 West of the Principal Meridian in the Province of Manitoba, subject to the reservations contained in the Crown Lands Act, to Gordon Eugene Wardle, the father of the appellant, for the sum of $2,500, part of which was to be paid in cash and the remainder in yearly instalments, the last of which was payable on November 1, 1947. Upon the completion of these payments, the vendor agreed to convey the said land to the purchaser by a transfer under the *Real Property Act,* subject to the conditions and reservations contained in the original grant from the Crown.

In due course, the payments called for by the agreement were made. Wardle, who had apparently purchased the property for his son, the present appellant, who was a minor at the time the agreement was made, executed a quit claim deed in favour of the latter, which was delivered to the Association upon the completion of the payments with a request that the transfer be made to Edward Gordon Wardle. This was done and on September 9, 1948, the

Association executed a transfer in the form provided by the *Real Property Act* (c. 178, R.S.M. 1940), which read in part:—

> The Manitoba Farm Loans Association being registered owner of an estate in fee simple in possession subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten or endorsed hereon in all that piece or parcel of land known and described as follows:
>
> The West half of Section Twenty-four in Township Ten and Range Twenty-eight, West of the Principal Meridian, in the Province of Manitoba. Subject to the Reservations contained in the Crown Lands Act . . . transfers to the said EDWARD GORDON WARDLE all its estate and interest in the said piece of land.

In pursuance of this transfer a certificate of title issued to the appellant in which the land so transferred was described in the language of the transfer. The certificate, as required by the *Real Property Act,* bore the endorsement that the land mentioned should, by implication and without special mention in the certificate unless the contrary be expressly declared, be deemed to be subject, *inter alia,* to any subsisting reservation contained in the original grant of the land from the Crown.

In the Fall of 1951 the appellant, apparently believing that he was entitled to the oil and other mineral rights, proposed to grant a lease of such rights, oil having been discovered in the vicinity, but was informed by the solicitors for the proposed lessees that they were unwilling to accept his title. On March 12, 1952, the present action was brought.

At the time the agreement referred to was made, the Association held a certificate of title to the lands in question in its name dated September 7, 1937. The description in this certificate was in the same terms as the description in the agreement of sale and as in the certificate of title issued to the appellant in 1948.

The Statement of Claim, after reciting the circumstances under which the certificate of title had issued to the Association in the year 1937 and alleging that the latter was the owner in fee simple of the said lands, without any reservation to the Crown in the right of the Province of Manitoba of any oil, gas, petroleum or mineral rights at the date when the agreement of sale was entered into, said that, by the agreement, George Eugene Wardle "did purchase

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the said lands" from the Association and thereafter had quit claimed his interest in the said lands and in the agreement of sale to the plaintiff, and that the plaintiff upon payment of the purchase price:—

became entitled to a transfer and conveyance of the said lands clear of encumbrances and without any reservations as to oil, gas, petroleum or mineral rights.

After reciting the fact that the payments called for by the agreement had been made and that the Association had transferred to the plaintiff "all its estate and interest in the said piece of land" and that the certificate of title issued had been endorsed with a notation "subject to the reservations contained in the Crown Lands Act", it was alleged that the plaintiff had been entitled to a transfer and a certificate of title without any such notation or reservation. By the prayer for relief the plaintiff claimed a declaration that he was entitled to the oil and other mineral rights referred to and a direction that the Association do convey to him such rights.

While the plaintiff had not alleged that the written agreement of February 21, 1945, was not in accordance with such oral agreement, if any, as existed between G. E. Wardle and the Association prior to the execution of the agreement, Wardle was permitted at the trial to give evidence, without objection, that he had had no discussion with the officials of the Association as to the oil and mineral rights when he was negotiating the terms of the purchase. He said that he had been negotiating by correspondence during the year 1944 but there was some disagreement as to the price and, accordingly, he went to Winnipeg to see Mr. Griffith, the Chairman of the Board, and while the latter told him that he could not make a binding agreement without the approval of the Board, he would recommend that the property be sold at the price offered. When, in relation to this discussion, the agreement was signed is not disclosed by the evidence. Upon being asked whether anything had been said between him and any member of the Association about oil or minerals, he said there had not and that the

matter was not discussed. Asked as to the clause in the agreement reading "subject to the reservations contained in the *Crown Lands Act*", he answered:—

> Well, I didn't have any experience with titles. I thought it was just a natural matter that was in all agreements and titles. I wasn't acquainted with the general regulations regarding that and took it as a matter of course.

It is to be noted that the witness did not say that he did not understand what the clause meant, but rather that he thought it was a term commonly included in descriptions of land. In the absence, therefore, of any suggestion that any representation was made on behalf of the Association which led him to understand the language other than in its natural and ordinary meaning, or of some evidence that the clause was inserted in the agreement as a result of a mutual mistake, and neither is suggested either in the pleadings or the evidence, the only question is as to the proper interpretation of the expression in its context, since it is upon the written agreement, and not that agreement with a variation, on which the appellant based his claim.

The Crown Lands Act, as it was at the time the agreement of sale was entered into, was c. 48 R.S.M. 1940 (as amended by c. 98 S.M. 1943 and C.11 S.M. 1945). S.5 of the Act, which appears under a sub-heading "Reservations from Dispositions", provides that, in the absence of express provision to the contrary, there is reserved to the Crown out of every disposition of Crown lands, *inter alia*:—

> (*d*) mines and minerals, together with the right to enter, locate, prospect, mine in and remove minerals.

A term of the agreement read:—

> And it is further agreed that the Purchaser hereby accepts the title of the Vendor to the said lands and shall not be entitled to call for the production of any abstract of title or proof or evidence of title or any deeds, papers or documents relating to the said property other than those which are in the possession of the Vendor.

The evidence of the title of the Association was the certificate of title issued to it, as above stated, in 1937, which described the property in the same manner as it was described in the agreement of sale. While the nature of the property excepted might have been stated with greater particularity in the agreement, the interpretation to be placed upon the words "subject to the reservations contained in the *Crown Lands Act*" appears to me to be clear.

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The exceptions were enumerated by reference to s.5 of the *Crown Lands Act* and might be ascertained by reference to that section. It was not the Crown with whom Wardle was bargaining but with the Association, a separate entity. The rights reserved to the Crown by s.5 were excepted from the West Half of Section 24 in Township 10 and Range 28 West of the Principal Meridian and it was that property, with these exceptions, that formed the subject matter of the sale.

In the reasons for judgment delivered by Mr. Justice Adamson (now C.J.M.), with which the majority of the Court concurred, it is said that it makes no difference who presently has title to the mines and minerals when the question is, What did the appellant purchase? since if the Association owns the mines and minerals the clause is a reservation, while if the Government of Manitoba owns them it is an exception. With this I respectfully agree.

The transfer of the land subsequently made to the appellant by the Association described the property sold in the language of the agreement and the certificate of title which issued thereafter so describes it. In my opinion, the appellant received from the Manitoba Farm Loans Association exactly what the Association agreed to sell to George Eugene Wardle by the agreement of February 21, 1945, and the evidence discloses no cause of action.

In view of my conclusion, it is unnecessary for me to express my views upon the other questions which were so fully argued before us.

I would dismiss this appeal with costs.

Appeal allowed with costs.

Solicitors for the appellant: *Thompson & Scarth.*

Solicitors for the respondents: *A. E. Hoskin, F. J. Meighen.*