ELIE MARCOUX (PLAINTIFF).....APPELLANT;

1921

*Nov. 22,23,24
*Dec. 15.

AND

LOUIS L'HEUREUX (DEFENDANT

AND

THE ATTORNEY GENERAL FOR QUEBEC (INTERVENANT).....) RESPONDENTS.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Statute—Colonization lot—Location ticket—Notice of cancellation—Protest by ticket holder—Right to be heard—Delays for filing protest—Changes in the statute law—Retrospective effect—Whether part of the contract or question of procedure—Powers of the deputy-minister to cancel—Arts. 1527, 1574 to 1579 R.S.Q. (1909)—Arts. 1244, 1270 to 1285 R.S.Q. (1888)—Art. 1537 C.C.

The appellant obtained in 1896 a location ticket for a colonization lot situated in the Province of Quebec, but no letters patent were issued. In 1909, he was served with a notice of cancellation on the ground of non-compliance with the conditions of the licence 1° as to residence, 2° as to cultivation and building of an habitable house, and 3° as to non-payment of the nominal purchase price. Within the delays mentioned in the notice, the appellant sent a declaration under oath setting forth his reasons against cancellation, which affidavit was duly received and put on file in the department of Crown Lands. Later a superior officer of the department made a report on a printed form recommending the cancellation of this license, amongst many others, on the ground of non-compliance with all the three above-mentioned conditions and also stating that there had been no opposition by the ticket

*PRESENT:—Sir Louis Davies, C.J. and Idington, Duff, Anglin and Brodeur JJ.

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holders. The appellant's location ticket was subsequently cancelled and the same lot was re-sold under similar license to the respondent L'Heureux. The appellant then brought an *action pétitoire* against the respondent L'Heureux asking for a declaration that he was the owner of the lot; and the Attorney General for Quebec intervened in the case. The evidence shows that the two first grounds for cancellation contained in the notice were well founded but that the third one was not. At the trial, only the superior officer could give some explanations on the matter, as the deputy minister had previously died.

Held, Duff and Anglin JJ. dissenting, that upon the evidence the deputy minister, notwithstanding the erroneous report made to him, was fully acquainted with all the essential facts of the case and that he must have, after full consideration of appellant's objections, cancelled the licence for non-compliance with the two first conditions contained in the notice.

Per Duff and Anglin JJ. (dissenting)—The legislature, in providing by Art. 1579 R.S.Q. (1909) that the owner or occupant may, during the delay between notice and cancellation "set forth his reasons against such cancellation," impliedly prescribes consideration of such reasons by the officer empowered to order cancellation as a condition precedent to his exercising that power, and in this case the deputy minister ordered the cancellation of the appellant's location ticket relying upon a report made to him that there was no opposition.

At the time the appellant obtained his licence the statute law required sixty days notice of cancellation to be given; but, at the time the notice in this case was given, this law had been amended and the time reduced to thirty days. A thirty days notice was given to the appellant, who filed his objections within such delay.

Held, Duff J. *contra,* and Anglin J. expressing no opinion, that the new law was applicable to the appellant, as the statutory change was not one dealing with the conditions and obligations of the license but one pertaining to the mode and method by which the minister could exercise his jurisdiction to cancel.

Per Duff J.—A "licence of occupation" under sect. 1270 R.S.Q. [1888] confers upon the licensee not only a right of occupation and possession but an interest in the land *sui generis;* and the above legislation must be treated as affecting substantive rights of the licensee and not as an enactment relating to procedure.

Per Davies C. J. and Idington and Brodeur JJ.—The deputy minister had express power to adjudicate and sign the cancellation under art. 1244 R.S.Q. (1888); and, per Davies C. J. and Idington, J., if this article only meant that the deputy minister could sign on behalf of the minister after the latter had himself determined to cancel, it must be presumed that the minister has authorized his deputy to do so.

APPEAL from the judgment of the Court of King's Bench, appeal side, Province of Quebec, affirming the judgment of the Superior Court and dismissing the appellant's action.

The material facts of the case and the questions in issue are fully stated in the above head-note and in the judgments now reported.

Lafleur K.C. and *Beauregard* for the appellant.—The appellant was entitled to a notice of sixty days before cancellation as required by the statute law in force when his location ticket was granted, as the subsequent law had no retroactive effect. Art. 2613 C.C.—Art. 2 C.N.—Art. 18 R.S.Q. (1909). *Holland* v *Ross* (1); *Dechène* v *City of Montreal* (2); *Ross* v *Beaudry* (3).

The minister of Crown Lands alone has power to order the cancellation; and the deputy minister has not that power under art. 1527 R.S.Q. (1909).

There has not been a valid exercise of the power of cancellation owing to ignorance or misrepresentation of material facts, and there has been disregard of the fundamental principle of extending to a person a fair and impartial hearing before subjecting him to confiscation.

Lanctot K.C. and *Aimé Geoffrion K.C.* for the Attorney General—Notwithstanding the inaccurate report made to him, the deputy minister rightly signed the revocation with the whole file relating to the matter before him and in full knowledge of all the facts of the case.

(1) [1890] 19 Can. S.C.R. 566. (2) [1894] A.C. 640.
(3) [1905] A.C. 570.

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The change in the statute law relating to the delays of notification has a retrospective operation, as the enactment deals with procedure only and does not affect vested rights under a contract.

Major for the respondent L'Heureux.

THE CHIEF JUSTICE.—This was a dispute between two location ticket holders of provincial crown lands, lot no. 11 in the township of Nedelec, Province of Quebec. Marcoux the plaintiff, appellant, in 1896, obtained his location ticket for the lot which was subsequently cancelled by the deputy-minister of the department of Crown Lands and the lots re-sold under similar location ticket to respondent L'Heureux.

The present action is brought by Marcoux against L'Heureux to have the cancellation of the former's location ticket declared to be illegal on the grounds that (1) proper notice of the intention to cancel was not given; (2) that the deputy-minister had not the power to cancel; and (3) that if he had the power to cancel, he did so acting under false representations made to him by the superintendent Grenier to the effect that Marcoux had not paid the nominal purchase price of the lot (some $25.00) and had not made objection to the cancellation.

As to the first ground of proper notice of cancellation, I am of the opinion that it is not tenable. At the time Marcoux obtained his licence the statute law required 60 days notice of cancellation to be given, but, at the time the notice was given, this law had been amended and the time reduced to thirty days.

The contention of counsel for the appellant was that the 60 days required by the statute when the location

ticket was issued governed, and that the amendment reducing the time to 30 days did not apply to the location ticket of appellant Marcoux which was granted previously to that amendment.

The statutory provisions at the time the notice of cancellation was given were articles 1574 to 1579 of the Revised Statutes of Quebec (1909). They provided *inter alia* for the time and manner in which the notice should be given and that it should

> state that the cancellation shall take place if necessary, at any time after thirty days from the date of the posting and that during such thirty days the owner or occupant of the lot may set forth his reasons against such cancellation.

The appellant complied with this statutory right or privilege and filed his reasons against the cancellation with the department within the thirty days.

As to the conditions or obligations of the licensee under his location ticket non-compliance with which gave rise to a cause for forfeiture, they were: (1) taking possession of the land within six months; (2) continued residence thereon and occupation either by himself or other persons for at least two years; (3) within four years at the outside clearing and bringing under cultivation an area equal to at least ten acres for every hundred acres and the building of a habitable house at least sixteen feet by twenty feet.

It was not and could not be contended that these conditions were complied with. Appellant never built such habitable house, or resided on the lot personally or by others for him, or cleared or brought under cultivation part of it. The evidence as to such non-compliance was conclusive in my opinion. What was done by him was in conjunction with Dr. Bourbonnais, his brother-in-law, to erect a saw mill

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on certain other lands obtained by them from the Dominion government on an Indian reserve, over a mile distant from the lot in dispute, and to strip or partially strip this lot 11 and other adjoining lots which they held under other location tickets of lumber to supply the mill. The residences of Dr. Bourbonnais and the appellant were erected in proximity to the mill and neither of them on or near the lot in question.

The question then remains whether, even admitting such non-compliance, the necessary notice of cancellation was given before cancellation, *i.e.* whether the 30 days' notice given was sufficient.

A broad distinction exists and must be drawn, in my opinion, between a statutory change in any of the conditions or obligations of the licence non-compliance with which would give rise to a forfeiture, and such changes in the mode and method by which the Commissioner of Crown Lands when attempting to exercise his jurisdiction to cancel was to be governed. The former are, of course, part of the contract and unless covered by the express words of the amending statute would not be held applicable to location tickets, such as the one in question, previously issued.

But the manner and methods by which the commissioner should proceed in order to exercise his powers of cancellation were mere procedure. I think the statutory change in the notice required to be given to the licensee of the location ticket before cancellation from 60 to 30 days was of this latter character.

As a fact the appellant Marcoux acted upon this notice and within the thirty days filed with the Department his objections. From the evidence in the case I cannot doubt that they were considered by the deputy-minister Taché when he cancelled the location.

It is true that the report of his officer Grenier to him, which was made on a printed form recommending the cancellation of this licence amongst many others, stated as the ground of such recommendation not only the non-compliance with the conditions of the licence as to residence, cultivation, building of habitable house, etc., but also non-payment of the nominal purchase price and the want of objections to the cancellation. These two latter grounds were inaccurate. The nominal price had been paid and the objections to cancellation had been submitted to the department and were on file.

I have not any doubt at all from the evidence that Mr. Taché, the deputy minister, was fully acquainted with all the essential facts of this case, including the payment of the purchase price, the filing of the licensee's objections to cancellation and the non-compliance with the conditions of the licence. Unfortunately, however, Mr. Taché had died before the trial.

The *dossier* or file before him with reference to this lot in question and the number of times the question had been discussed in the department and the nature of the objections to cancellation made by the appellant and Dr. Bourbonnais preclude me from thinking that the deputy minister could have been misled by the report of Mr. Grenier on the two points mentioned. But this Grenier report was one referring to a number of lots besides the one in question as to which lot I am convinced the deputy minister Taché knew well the purchase price had been paid and the objections to cancellation filed. He made his order of cancellation, in my opinion, clearly on the ground of non-compliance with the conditions of the location ticket, those relating to residence, cultivation, building of a habitable house, etc., which was quite sufficient and of which there was the amplest evidence.

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As to his power to adjudicate and sign the cancellation, I am of the opinion that Art. 1244, R.S.Q. conferred upon him the express power to do so. If it only meant, as contended, that he could sign on behalf of the minister himself and that after the latter had determined to cancel, then I would say that the presumption would be that the minister has authorized him to do so. But I cannot accept the argument as to the limited character of the powers of the deputy minister under Art. 1244. I think he had ample power to adjudicate and formally to sign the cancellation.

For the foregoing reasons I would dismiss the appeal.

IDINGTON J.—The appellant obtained the following location ticket on the date thereof:—

AGENCE DES TERRES DE LA COURONNE

BAIE DES PÈRES, 3 nov. 1896.

$4.86.

Reçu de Elie Marcoux la somme de quatre $\frac{86}{100}$ piastres, étant le premier versement d'un cinquième du prix d'achat de 81 acres de terre contenus dans le lot no. 11 dans le township de Nédélec, P.Q., la balance étant payable en quatre versements égaux avec intérêt de cette date.

Cette vente, si elle n'est pas desapprouvée par le Commissaire des Terres de la Couronne, est faite sujette aux conditions suivantes, savoir:

L'acquéreur devra prendre possession de la terre ainsi vendue dans les six mois de la date de la présente vente, et continuer d'y résider et de l'occuper, soit par lui-même, soit par d'autres, pendant au moins deux ans à compter de ce temps; et, dans le cours de quatre années au plus, il devra défricher et mettre en culture une étendue d'icelle égale à au moins dix acres par chaque cent acres, et y construire une maison habitable d'au moins seize pieds sur vingt. Il ne sera coupé de bois avant l'émission de la patente que pour le défrichement, chauffage, bâtisses, ou clôtures; et tout bois coupé contrairement à cette condition sera considéré comme ayant été coupé sans licence sur les terres publiques. Nul transport des droits de l'acquéreur ne sera reconnu dans aucun cas où il y aura eu défaut dans l'accomplissement d'aucune des conditions de vente. Les lettres patentes ne seront émises dans aucune des conditions de vente. Les lettres patentes ne seront émises dans aucun cas, avant l'expiration de deux années

d'occupation, ni avant l'accomplissement de toutes les conditions, même quand le prix de la terre serait payé tout entier. L'acquéreur s'oblige à payer pour toutes améliorations utiles qui peuvent se trouver sur la terre vendue, appartenant à d'autres qu'à lui. Cette vente est aussi sujette aux licences de coupe de bois actuellement en force, et l'acquéreur sera obligé de se conformer aux lois et règlement concernant les terres publiques, les bois et forêts, les mines et pêcheries dans cette province.

A. E. GUAY,
Agent.

At foot thereof was printed on same sheet as the foregoing but in no other way forming part of the contract created by the location ticket itself, the following:—

AVIS:—Lorsque le Commissaire des Terres de la Couronne est convaincu qu'aucun acquéreur de terres publiques ou son concessionaire, représentant ou ayant cause s'est rendu coupable d'aucune fraude ou abus, ou a enfreint ou négligé d'accomplir quelque condition de la vente; aussi lorsqu'une vente a été faite par méprise ou erreur, il peut canceller telle vente, reprendre la terre y désignée, et en disposer de même que si elle n'eut jamais été vendue. (Voir l'article 1283 des Statuts Refondus de la Province de Québec.)

The appellant never erected on said land such a dwelling house as the conditions required, never in fact resided thereon, never cleared and cultivated the prescribed quantity of land required by the conditions. Yet he paid in course of time the price named of which the last instalment was paid on 7th Nov., 1903.

On the 15th April, 1909, the officers of the Crown Lands department began proceedings to have appellant's rights forfeited for breach of the conditions in said contract.

The statutory provisions then in force relative thereto were sections 1574 to 1579 inclusive, R.S.Q. [1909].

The first of these empowered the minister for many reasons, including such as I have already mentioned above as indicative of conditions, to take steps to cancel such sale as above set forth.

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By section 1575 such cancellation was declared to effect a complete forfeiture, but provided also that the minister might nevertheless grant such compensation or indemnity as he might consider just and equitable.

Sections 1576 to 1579 are as follows:—

1576. Such right of revocation shall not be deemed an ordinary right of dissolution of a contract for non-fulfilment of conditions; it shall not be subject to article 1537 of the Civil Code, and may always be exercised as occasion may require, whatever time may have elapsed since the sale, grant, location, lease or occupation licence.

1577. No cancellation under article 1574 shall be made before a notice is given by the Minister or by a Crown lands' agent authorized by him in the manner hereinafter indicated.

1578. Such notice shall be posted by the Crown lands' agent, or by any person authorized by him, on the door of the church or chapel or other public building nearest to the lots in question, and shall be sent by post card to the purchaser, grantee, locatee, or lessee of any public land or his assigns mentioned in article 1574.

The notice shall state that the cancellation shall take place, if necessary, at any time after thirty days from the date of the posting.

1579. During such thirty days the owner or occupant of the lot may set forth his reasons against such cancellation.

It is upon the operative effect of one or all of these provisions that this appeal should turn and upon the question of the deputy minister to act instead of the minister to which I will presently advert.

It was argued before us by the counsel for the appellant that the article 1283 of the Revised Statutes of Quebec referred to in the above notice, formed part of the contract in question, by virtue of the notice being so given, and by force of the statutory provision, existent in said article which was in full force and effect at the date of the location ticket and hence that the sixty days' notice required thereby, and so far as like contracts, made whilst that was in force, imperatively governed the terms upon which the Minister could act in declaring the rights acquired by the location ticket forfeited.

I cannot assent to such a proposition of law.

Of course if I could come to the conclusion, by any correct process of reasoning, that the said statute formed an essential part of the contract or created an obligation on the Crown in relation thereto and that it must be read as if it had formed part thereof, I would find some difficulty in upholding any decision wherein the minister had acted in that regard without giving the sixty days' notice.

For example we have many statutory provisions such as those declaring that, in certain cases of insurance, statutory conditions set forth must be and form part of the terms of that class of contract; in some of our western provinces provisions that certain named conditions in machine contracts are essential to the validity thereof; and in Ontario and others, as well as in England, that certain conveyances of land, or leases made pursuant thereto, must be held to contain certain covenants or other provisions which must be observed and I think in some cases of leases the right to terminate is made dependent on the observation of certain specified statutory terms.

In all such like contracts falling within the respective ambits of such like statutory rights or obligations the statutory enactment must be read as if it had by consent of the contracting parties formed part of their contract. And the provisions of later enactments cannot be regarded as a means of terminating the contractual relations so formed unless the legislature in the exercise of its supreme power over all rights of contract or property saw fit to declare same forfeit.

The means of terminating such a contract as in question herein (for breach of contractual condition) I respectfully submit is a subject entirely within the

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province of the legislature, a mere matter of judicial procedure or otherwise which may be changed from year to year as it deems fit and forms no part of the contract. Any other view seems to lead to the conclusion that inasmuch as the clause was obliterated by its repeal by virtue of another being substituted, there was left no remedy.

The reorganizing of our courts of judicature often imposes hardships or confers benefits not expected by contracting parties.

And we see by article 1576, above quoted, how careful the legislature was to observe that conception of the law by expressly withdrawing therein the peculiar procedure enacted herein from any possible operation of article 1537 of the Civil Code.

Indeed it goes so far as to substitute thereby rules of its own for the purpose by which, but for the above enactment, reliance might have been placed upon some of the other articles of the Code referred to therein somewhat of the character of legislation I have just now adverted to.

I think beyond any question the minister had the power to determine herein such questions as he did, or his deputy (if in fact he so acted in his stead) did, and the only remaining questions are, first, whether the deputy minister had the like power under and by virtue of article 1527 of the R.S.Q. 1909, which reads as follows:—

1527. Without prejudice to the control of the minister, the deputy minister shall have the superintendence of the other officers, clerks, messengers or servants, and the general control of all the affairs of the department. His orders shall be executed in the same way as those of the minister himself, and his authority shall be deemed to be that of the head of the department, so that he can validly affix his signature in his said capacity, and thereby give force and authority to all acts, receipts, occupation licences, contracts or deeds of sale, location-tickets, letters patent, adjudications, revocations of sales or locations, and all other documents within the jurisdiction of the department.

The Lieutenant-Governor in Council may, from time to time, whenever he thinks proper, revoke the powers of the deputy minister, wholly or in part.

I am of the opinion that the deputy minister had in law thereby such a power as exercised herein and now in question.

In any event, until the contrary is established by evidence, the presumption must be, if only the minister could determine, that the minister had so disposed of the matter, and the deputy minister in signing was properly discharging the duty of affixing his signature to that which his superior had determined.

There is unfortunately no evidence of fact as the deputy minister has since died.

The slovenly manner in which the formal judgment was drawn up and submitted, by alleging non-payment of the price when in fact paid, and the allegation of absence of any answer on the part of the appellant to the notice, when in fact there was abundant evidence that he had answered it, tends to shake one's confidence in the legal presumption I rely upon, yet I do not think it can be ignored when either party might, as it affected both, have adduced evidence to the contrary if it would have served him.

I suspect each knew there was nothing to be gained thereby.

As to the question so much relied upon, of no hearing given to the other side, I presume the forcible presentation thereof largely depended on the proposition that sixty days' notice was required.

I find that contention untenable, and such presentations of the appellant's case as made by himself and on his behalf by Dr. Bourbonnais, his brother-in-law, were such as secured to them all that could be said.

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In regard to the case of *Paulson* v. *The King* (1) cited in argument as sufficient to entitle appellant to claim waiver I do not, on an examination of the facts, find it applicable here.

The last payment was as stated above made in 1903 and I do not see how that would help to protect appellant to cover his persistent breach of conditions for five and a half years longer.

And in that connection I may remark that the entire misconception of appellant, as to his rights, seems to have been rather remarkable, else he never should have taken a location on such lot. Yet notwithstanding all that I should have been disposed, if given the power, to exercise that given the minister, if the facts, possibly one sided, in this case, in regard to the expense of drainage improving the land warranted doing so.

Hence I have from that and undesirable features the case presents considered whether or not costs of this appeal should be allowed but concluded we cannot afford to encourage litigation by acting in regard to costs further that it concerns those directly concerned.

And hence, hoping the intervenant may reconsider some things though deprived of costs, I would dismiss this appeal but only with costs to the respondent and no costs to intervenant despite the excellent argument presented on his behalf enuring to the benefit of respondent.

DUFF J. (dissenting)—A "licence of occupation" under sec. 1270 of the Revised Statutes of 1888 although described in terms as a licence confers upon the licensee not only a right of occupation and possession

(1) [1915] 52 Can. S.C.R. 317.

but an interest in the land, a true *droit réel;* an interest, it may be, not easily definable by reference to the ordinary juristic categories and perhaps *sui generis,* but an interest of quite definite characteristics deducible from the statute itself. This was in effect held in a series of cases in the courts of Upper Canada and Ontario decided upon statutory provisions not differing in substance from the articles of the Quebec statute now before us; and the propriety of these decisions has never been questioned. *Henderson*v. *Seymour* (1); *Henderson* v. *Westover* (2).

It was conceded by counsel for the respondents that failure on part of the licensee to perform the conditions of the licence would not *ipso jure* operate to put an end to his interest; that, it was admitted, could only take place through the act of the commissioner in exercise of the power of cancellation given by Art. 1283; and it seems permissible to speak of this divestive condition as one of the elements determining the character of the licensee's right; and consequently to describe any alteration of the terms upon which this right of cancellation becomes operative (making that right more onerous for the licensee) as an alteration of the law prejudicing the licensee in his substantive rights.

Prima facie therefore any change in the law which would, if applicable, have such effect must, if expressed in general terms, be held to exclude existing licences of occupation from its purview. "Retrospective laws are" said Willes J. for the Exchequer Chamber in *Phillips* v *Eyre* (3)

(1) [1852] 9 U.C. Q.B. 47; (2) [1852] 1. E. & A. 465.
(3) [1870] L.R., 6 Q.B. 1 at p. 23;

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no doubt *prima facie* a questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of then existing law. "*Leges et constitutiones futuris certum est dare formam negotiis non ad facta praeterita revocari; nisi nominatum et de praeterito tempore et adhuc pendentibus negotiis cautum sit.*" Accordingly, the court will not ascribe retrospective force to new laws affecting rights, unless by express words or necessary implication it appears that such was the intention of the legislature.

Is this a case governed by this general principle or does it fall within the special rule that no suitor has a vested interest in any course of procedure? Is the provision of the law requiring 60 days notice as a condition of the exercise of the power of cancellation a provision relating to "procedure" within the meaning of this rule? I have no doubt that "procedure" within this rule means procedure in a court of justice and therefore the present case is not strictly within the terms in which this exception to the general principle is commonly stated. On the other hand, the general principle itself is a principle of construction (based, Lord Coke says, 2 Inst. 292, upon "a rule and law of parliament") and the inference from this practice of parliament must, of course, give way where an intention to the contrary is plainly manifested and this intention to the contrary has sometimes been inferred from the subject matter and the circumstances of the legislation. *Gardner* v. *Lucas* (1); *West* v. *Gwynne* (2); *Welby* v. *Parker* (3). Is the analogy between this provision and an enactment relating to procedure in the strict sense, that is to say, a processual enactment sufficiently close and sufficiently obvious to justify that inference?

(1) 3 App. Cas. 582 at pp. 590 and 603.

(2) [1911] 2 Ch. 1.

(3) [1916] 2 Ch.1.

Such enactments may safely be assumed to be fashioned with a view to removing anomalies and causes of unnecessary delay and to securing the proper object of all forensic procedure, the judicial determination of controversies about legal rights after a fair hearing of the parties and to be administered accordingly, and (see Maxwell on Statutes, 400 and 401) it is no fair cause of complaint on the part of any litigant that the disposition of his cause should be regulated by rules of procedure so conceived. And when one considers the general inconvenience and confusion which must attend a system under which at one and the same time causes of the same class are regulated by different sets of procedure, the necessity becomes immediately apparent of the canon that such enactments are retrospective in the sense that they apply to all future proceedings irrespective of the time when the rights asserted in such proceedings arose, unless, to refer to Lord Blackburn's judgment in *Gardiner* v. *Lucas* (1) there is some good reason to the contrary.

These considerations are not fully applicable to the present question. The argument from inconvenience has relatively little or no weight; on the other hand it seems to be a reasonable presumption that the legislature in reducing the period from 60 days to 30 was acting upon the view that the shorter period would be sufficient and that the reduction would entail no serious risk of injustice; and that the legislature intended the amendment to be retrospective in its operation, may not unfairly be advanced as a proper deduction from this premise.

(1) 3 App. Cas. 582.

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As against that it may be said that there is a wide difference between proceedings which take place under the general system of remedial law before a court of general jurisdiction and a proceeding which merely consists of the steps that a grantor is obliged to take under the provisions of a private instrument or under the provisions of a statute, limited in its application to a particular type of instrument for the purpose of enabling him to exercise a power reserved to him to put an end to the estate or interest created by his grant. The circumstance that the grantor is the Government and that the official whose duty it is to exercise the discretion vested in the Government (although he is to exercise that discretion, it must be admitted, on grounds in relation to which he must be assumed to be personally indifferent) suggests an analogy to proceedings in a court of justice which I must say I think is deceptive. On the whole, although the point is a very debatable one, I think this legislation falls on the other side of the line and must for the purpose of determining the question before us, be treated as legislation affecting substantive rights and not as an enactment relating to procedure.

I have discussed the questions presented upon the assumption that the appellant's rights as licensee rest upon the provisions of the statute. It was argued that the reciprocal rights of the Crown and the licensee rest upon contract, the terms of the contract being those expressed in the receipt dated the 3rd November, 1896, which is in evidence. We have not before us the regulations under which this receipt is issued and I have heard no good reason for holding that the statutory rights of the appellant—and by that I mean, of course, the rights arising from the enactments of the statute considered in themselves—are to suffer

any reduction or impairment or qualification by force of the terms of a departmental receipt. If the relation is to be described as that of a contract, the provisions relating to cancellation are, in my judgment, elements of that contract and indeed I am not sure, even upon the Attorney General's hypothesis, that the *avis* appended to the receipt in which article 1283 of the Revised Statutes of 1888 is brought to the notice of the licensee, would not be sufficient in itself to produce this effect.

The Attorney General places some emphasis upon the last sentence of the receipt which is in these words:

> Cette vente est aussi sujette aux licences de coupe de bois actuellement en force, et l'acquéreur sera obligé de se conformer aux lois et règlements concernant les terres publiques, les bois et forêts, les mines et pêcheries dans cette province;

and the argument derived from this sentence is based upon the contrast between the use in the second limb of the sentence, without qualification, of the phrase "lois et règlements concernant les terres publiques &c." and the qualification appended in the first limb to the phrase "licences de coupe de bois" which are limited explicitly to those "actuellement en force" and the contention is that the employment of the phrase "lois et règlements" without qualification indicates an intention to embrace within the scope of this term of the receipt amendments made during the currency of the licence. It seems sufficient to say that this argument proves too much. It is not argued that the terms of the licence prescribing the duties of the licensee, for example, in relation to residence or to clearing are intended to be subject to such legislative change, which would be the necessary consequence fo adopting the construction contended for.

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There is another ground upon which I think the appeal should succeed. Both in the Revised Statutes of 1888, which the appellant says governed the proceedings, and in the Revised Statutes of 1909, which the respondent invokes, there is explicit provision for the presentation by the licensee of his reasons against any proposed cancellation. This provision imports, I think, what would probably be otherwise implied, that a cancellation *parte inaudita* has no validity under the statute. And I think it is established that the appellant, although he did everything it was incumbent on him to do for the purpose of bringing his representations to the attention of the Commissioner, was in effect denied this statutory right. There is no question of intentional misconduct; least of all on part of the deputy commissioner, the late Mr. Taché. For some unexplained reason, the statement of the case as presented to Mr. Taché for adjudication by the officials of the department represented that the licensee was not opposing cancellation. I am quite unable, with great respect, to follow the process by which the effect of the formal official document is sought to be displaced by reference to the vague impressions of departmental officials. There is nothing before us, in my opinion, outweighing or counterbalancing the inference properly arising from the documents themselves.

The facts in evidence, Mr. Lanctôt in his very able argument urged, leave no room for doubt that Mr. Taché in fact at the time of the adjudication was fully acquainted with all the circumstances pertinent to the inquiry with which he was charged. I think that with one qualification Mr. Lanctôt made his point good—but that qualification is fatal to the argument. I cannot infer in face of the formal statement that

Mr. Taché had before his mind the fact that the locatee was opposing cancellation or that he had before him the representations which the locatee desired the commissioner to consider in passing upon his case. Needless to say, speculation as to what the deputy commissioner might have done in any event is idle. One term of the condition to which the appellant's rights were subject was that before cancellation he should have an opportunity to present to the commissioner the considerations by which he desired to induce the government to withhold its hand and to state these reasons in his own way. That right was denied him. *Qui statuit aliquid parte inaudita altera aequum licet statuerit aequum non fuit.*

ANGLIN J. (dissenting)—I am of the opinion that the cancellation of the location ticket of the appellant should be declared null and void substantially on the ground on which Pelletier and Martin JJ. dissented from the opinion of the majority of the Court of King's Bench.

In providing by article 1579 (R.S.Q. 1909) that the owner or occupant may, during the thirty days required by article 1578 to elapse between notice and cancellation, "set forth his reasons against such cancellation," the legislature impliedly prescribes consideration of such reasons, if furnished, by the officer empowered to order cancellation as a condition precedent to his exercising that right. The appellant made an affidavit setting forth his reasons for opposing the cancellation of his location ticket and it was duly received by the department within thirty days of the posting of the notice. Nevertheless the officer in charge of the file reported, *inter alia*, that no opposition had been made; and upon that report, as appears by his certificate subjoined to it,

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the Deputy Minister ordered cancellation. I am not prepared to accept Mr. Grénier's explanations and impressions as sufficiently dependable to controvert the statements made in that official document. I think it is conclusively established for the purposes of this case that Marcoux's "reasons against cancellation" were not presented to, or considered by, Mr. Taché. There was therefore not only failure to observe the implied condition of jurisdiction imposed by the statute, but a grave disregard of a fundamental canon of natural justice—*audi alteram partem.*

Assuming, but without so deciding, that the notice given as prescribed by Arts. 1577-8 of the Revision of 1909 was sufficient and that the deputy minister was empowered by Art. 1527 to order the cancellation, I would allow the plaintiff's appeal on the ground above stated.

BRODEUR J.—Nous avons à décider dans cette cause si l'annulation par le département des Terres de la Couronne d'un billet de location a été régulière et légale.

Le 3 novembre 1896, l'agent local du departement des Terres vendait par billet de location à l'appelant Marcoux le lot no. 11 du canton de Nedelec pour une somme nominale, et ce dernier s'obligeait de défricher et de mettre en culture ce lot et de s'y bâtir une maison.

Vers le même temps, le beau-frère de Marcoux, le Dr Bourbonnais, et Marcoux lui-même, se portaient acquéreurs des dix autres premiers lots du même canton.

Le Docteur Bourbonnais avait projeté de faire dans cette région une exploitation agricole et forestière et à cette fin il avait pris avec son beau-frère, sous billets de location, ces onze lots de terre qui

étaient tous boisés. Il songea d'abord à construire un moulin à scie sur les deux premiers lots qui se trouvent sur les bords de la rivière des Quinze, mais ayant constaté que ces deux lots étaient inondés la plus grande partie de l'année, il acheta du gouvernement fédéral certains lots voisins qui faisaient partie d'une réserve indienne et qui aboutaient aux lots du canton de Nedelec. Il construisit alors sa scierie sur ses lots de la réserve indienne, y construisit en même temps des maisons, granges et dépendances et y fit du défrichement et de la culture.

Il négligea, ainsi que Marcoux, de remplir sur les lots du canton de Nedelec les obligations qu'ils avaient contractées. A l'exception de la confection d'un fossé, d'un peu d'abatis et de quelques autres menus travaux, rien n'avait été fait sur les lots de Nedelec.

La preuve nous démontre, par exemple, qu'aucune partie de ces derniers lots ne fut mise en culture et qu'aucune maison habitable n'y fut construite ainsi que le requéraient la loi et le billet de location. On s'est contenté de payer le prix de vente, qui était un prix nominal, et de représenter pendant des années et des années au département des Terres et au gouvernement que les lots Nedelec avaient pour *devanture* les lots acquis par le Dr Bourbonnais sur la réserve indienne et que les bâtisses et le défrichement faits sur ces derniers lots rencontraient sinon la lettre, du moins l'esprit de la loi.

Le département des terres, après treize ans, soit en 1909, décida d'annuler les billets de location des lots concédés dans le canton de Nedelec pour la raison que les conditions d'établissement, de résidence et de culture n'avaient pas été remplies et les revendit sous billet de location au défendeur L'Heureux.

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La présente action, qui est de la nature d'une action pétitoire dirigée contre le nouvel acquéreur L'Heureux, a été instituée par Marcoux pour faire déclarer illégal cette décision du département; et il invoque trois principales raisons contre la validité de cette décision: 1° l'insuffisance de l'avis; 2° l'incompétence du sous-ministre de prononcer la résolution; 3° les fausses représentations qui ont été faites au sous-ministre et sa négligence de considérer les objections de Marcoux.

Insuffisance de l'avis.

Quand le billet de location a été émis, la loi exigeait qu'un avis de soixante jours fût donné avant que le ministre pût annuler un billet de location. Plus tard, cette loi fut modifiée et la législature décida qu'un délai de trente jours serait suffisant. Le département a procédé sous la nouvelle loi et n'a pas donné les soixante jours d'avis. La question qui se présente à ce sujet est de savoir si la loi nouvelle a un effet rétroactif.

En principe général, les lois n'ont pas d'effet rétroactif. Lorsqu'une loi nouvelle vient remplacer une autre relative au même objet, la loi ancienne régit seule les actes juridiques qui se sont définitivement accomplis sous son empire sans que la loi nouvelle puisse leur porter aucune atteinte. Mais il arrive qu'un acte juridique accompli sous l'empire de l'ancienne loi puisse produire des conséquences sous l'empire de la nouvelle loi. Il s'agit de savoir alors quelle est la loi qui doit régir ces conséquences.

Contre le droit acquis, la loi ne peut rien faire, à moins qu'elle ne s'en soit exprimée formellement; mais l'intérêt social exige que la législation la plus récente ait son effet sur les rapports juridiques nés

avant son existence. Par droits acquis, il faut entendre les facultés légales régulièrement exercées. Si ces facultés n'ont pas été exercées, elles deviennent expectatives et sont soumises à la législation nouvelle.

Dans le cas actuel, le législateur a édicté que le gouvernement ou le département des terres peut révoquer un billet de location, si le colon ne remplit pas ses conditions d'établissement, et elle indique la procédure à suivre. Ce n'est pas l'exercice de la faculté du vendeur qui peut demander la résolution du contrat faute de paiement du prix, suivant les dispositions de l'art. 1537 du Code Civil, car l'article 1285 des statuts refondus de Québec de 1888 déclare formellement que le droit de résolution ne sera pas soumis aux dispositions de cet article du code civil. Ce droit de résolution participe du droit public; et les dispositions des articles 1283 et suivants des dits statuts refondus déterminent les conditions dans lesquelles ce droit de résolution doit être exercé et la procédure qui doit être suivie.

Cette disposition relative au délai est soit une matière de prescription, soit une matière de procédure.

La loi ancienne régit toutes les prescriptions déjà accomplies; mais la loi nouvelle régit toutes les prescriptions qui étaient en cours lors de la nouvelle loi ou qui ont commencé sous l'empire de la nouvelle loi. Or, le délai de soixante jours invoqué par l'appelant comme représentant la limite de son droit a commencé à courir sous l'empire de la nouvelle loi. C'est donc cette dernière qui doit s'appliquer. Le département n'était donc pas tenu d'attendre soixante jours pour déclarer la vente résolue, mais un délai de trente jours était suffisant. Or la décision a été rendue plus de trente jours après l'affichage de l'avis.

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Si c'est une question de procédure, il est de principe que toutes les lois de procédure sont immédiatement applicables.

Dans un cas comme dans l'autre la prétention de l'appelant est mal fondée.

Compétence du sous-ministre.

L'appelant prétend en outre que la résolution est nulle parce qu'elle a été prononcée par le sous-ministre et non par le ministre lui-même.

Je vois que le demandeur-appelant lui-même, dans sa déclaration, reconnaît que le gouvernement lui-même a décidé d'annuler les ventes en question. Mais en supposant que le gouvernement ou le ministre n'ait pas rendu la décision, la loi reconnaît formellement dans l'article 1244 S.R.P.Q. 1888, que le sous-ministre a la même autorité sur les matières de cette nature que le ministre lui-même, de sorte qu'il peut lui-même signer toute résolution d'un billet de location. Ce n'est pas étonnant que ce pouvoir soit conféré par la loi au sous-ministre, quand on voit dans le cas actuel que le billet de location a été signé par un simple agent local des terres et qu'il pouvait être alors valablement annulé par son officier supérieur, le sous-ministre.

Décision erronée et absence d'audition.

En troisième lieu, l'appelant Marcoux dit que la décision est nulle parce que le département n'a pas validement exercé ses pouvoirs d'annulation, qu'il a ignoré ou faussement représenté les faits et qu'il n'a pas fourni aux parties l'occasion d'être valablement entendues.

J'avais eu d'abord, lors de l'audition des plaidoiries, quelques doutes à ce sujet; mais une étude complète de la preuve et des documents produits me démontre que ce troisième point est également mal fondé.

Il est admis par le demandeur Marcoux qu'il n'a pas rempli les conditions d'établissement et de culture qui lui étaient imposées par son contrat et par la loi. Mais il ajoute que le rapport du surintendant Grenier, au bas duquel le sous-ministre a prononcé la sentence d'annulation, contenait deux erreurs, savoir que Marcoux n'avait pas payé son prix de vente et qu'il ne s'opposait pas à l'annulation.

Il est bien vrai que cet officier Grenier, par une négligence un peu inexplicable, a déclaré cela dans son rapport au sous-ministre. Mais il ne faut pas attacher plus d'importance qu'il n'en faut à l'erreur ou à la négligence d'un subalterne Ce que nous avons à considérer est de savoir si le sous-ministre avait des raisons justifiables pour annuler ce billet de location. Quant à cela, il ne peut pas y avoir de doute. Ce lot avait été concédé pour un prix nominal, soit environ $25.00. L'intention évidente du gouvernement en vendant ce lot était de le faire défricher et mettre en culture. Le prix de vente n'y était pour rien. Il s'agit pour le gouvernement de mettre en rapport ces nombreuses terres boisées qui pourraient donner une production agricole constituant l'une des plus grandes richesses nationales.

Le lot en question en cette cause aurait dû être défriché depuis longtemps et Marcoux aurait dû aller y résider; mais il n'avait rien fait de cela. Sept ans après qu'il eût eu la concession, l'agent local du dé-

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partement a fait rapport que les conditions d'établissement sur ce lot, ainsi que sur les autres concédés au Dr Bourbonnais et à lui-même, n'avaient pas été remplies. Le docteur Bourbonnais s'est alors adressé au ministre du temps qui a jugé à propos de temporiser et de ne pas annuler la vente. La même question était reprise de temps à autre, surtout à chaque changement de ministre, et le Dr Bourbonnais revenait à la charge en implorant ses bonnes grâces et en alléguant que ces lots du canton de Nedelec ne formaient qu'une seule exploitation avec les lots de la réserve indienne; et que l'exploitation agricole de ces derniers se faisait rapidement et profitait aux lots du canton Nedelec.

On voit donc que cette situation a été constamment débattue pendant des années et des années entre le département et les concessionnaires. De nombreuses correspondances étaient échangées sur ce sujet. Mais en 1909 la question était devenue plus brûlante. Les autorités civiles et religieuses et les agents de colonisation protestèrent contre le fait que le Dr Bourbonnais et Marcoux ne faisaient pas de défrichement sur leurs lots de Nedelec. Et alors le ministre fut obligé de prendre une décision définitive. Il eut d'abord à considérer les demandes qui étaient faites au sujet des lots 7-8-9 et 10 du même canton et il décida formellement, évidemment après consultation avec ses collègues du gouvernement, que les billets de location émis pour ces lots devaient être annulés.

Vers le même temps, des procédures étaient commencées pour faire l'annulation de la vente des autres lots et notamment du lot en question en cette cause-ci; mais quant à ces derniers lots, la question devenait à proprement parler une matière de routine, car la décision antérieure du gouvernement et du départe-

ment portait que ces ventes au Dr Bourbonnais et à Marcoux devaient être annulés. Les avis requis furent donnés. Le Dr Bourbonnais et Marcoux produisirent leurs objections; et enfin le sous-ministre, le 7 juin, prononçait l'annulation.

Le document qu'il a signé était imprimé et était dans les termes suivants:

> Je, soussigné, en vertu des pouvoirs à moi conférés par la loi, révoque et annule les ventes susmentionnées.

Et au-dessus de cette décision du sous-ministre se trouvait un rapport de l'assistant-surintendant Grenier où il donnait les numéros des lots dont la vente devait être annulée. Ce rapport imprimé mentionnait le défaut d'accomplissement des conditions, le défaut de paiement et l'absence d'opposition comme raisons pour l'annulation.

Il avait évidemment oublié de retrancher dans cet imprimé les références au défaut de paiement et aux oppositions du colon. L'appelant Marcoux prétend que le sous-ministre a prononcé l'annulation sur ce rapport erroné.

Je suis bien convaincu, au contraire, que le sous-ministre, qui est maintenant décédé et qui n'a pas pu être entendu comme témoin, a décidé en pleine connaissance de cause. Il n'était pas sans savoir que depuis dix ans près Marcoux, soit par lui-même, soit par son beau-frère, était en instances auprès du département pour le convaincre que les conditions d'établissement étaient remplies, sinon à la lettre du moins dans l'esprit de la loi. Il devait savoir également que ces lots avaient été payés. D'ailleurs le prix nominal auquel ces lots avaient été vendus ne peut avoir

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aucun effet. Ce qu'il y avait de plus important était la résidence sur ces lots et leur défrichement. Le sous-ministre savait également les objections que Marcoux faisait contre l'annulation. Depuis sept ans ces objections avaient eu à être examinées et considérées par le département.

Je ne crois donc pas que les cours peuvent intervenir pour casser la décision faite par le département. Ce serait substituer notre discrétion à celle que le tribunal constitué par la législature pouvait seul exercer.

Pour toutes ces raisons l'appel doit être renvoyé avec dépens.

Appeal dismissed with costs. (1)

Solicitors for the appellant: *Atwater & Bond.*

Solicitors for the respondent L'Heureux: *Fortier & Major.*

Solicitor for the intervenant: *Charles Lanctôt.*

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(1) Leave of appeal to the Privy Council was refused on the 6th day of March 1922.