BENJAMIN C. HOWARD (PLAINTIFF) . APPELLANT; 1914

AND *June 8, 9, 10.

JAMES D. STEWART (DEFENDANT) . . RESPONDENT. *Oct. 13.

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

Crown lands—Colonization—Location ticket—Transfer by locatee—Sale—Issue of letters patent—Title to land—Registry laws—Notice—Arts. 1487, 1488, 2082, 2084, 2085, 2098 *C.C.*

Per Idington, Anglin and Brodeur JJ.—Prior to 1st July, 1909, the holder of a location ticket for colonization land in the Province of Quebec had an interest in the land capable of being sold. In case of sale the purchaser's title became absolute on issue of the letters patent. Such title was good, even if unregistered, against a purchaser from the original locatee after the issue of letters patent who had notice of the prior sale.

Per Duff J.—Without the approval of the Crown Lands Department, a locatee of Crown lands was incapable of transferring any *jus in re* therein while the location was vested in him. Nevertheless he could make a contract for the sale of his rights in the located land, while he remained locatee thereof, which, under the provisions of article 1488 of the Civil Code, would have the effect of transferring the land upon the issue of letters patent thereof to him by the Crown. On the proper construction of article 2098 of the Civil Code, where the title of the transferror does not come within the classes of rights exempted from the formality of registration by article 2084 C.C. and has not been registered a transfer of that title does not take effect until the prior title deed has been registered.

Judgment of the Court of King's Bench (Q.R. 23 K.B. 80) reversed, Davies J. dissenting.

Per Davies J. dissenting.—A transfer by the locatee of his rights is void if made to a person or a company who could not become a *bonâ fide* settler and, therefore, could not, himself or itself, obtain a location ticket for colonization land.

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*PRESENT:—Davies, Idington, Duff, Anglin and Brodeur JJ.

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APPEAL from a decision of the Court of King's Bench, appeal side, Province of Quebec (1), affirming the judgment at the trial in favour of the defendant.

The facts which gave rise to the litigation are as follows:—

On the 29th April, 1908, lot 35, range 1, of the Township of Arago, was granted by location ticket to one Amédée Thibault.

On the 11th August, 1909, Thibault sold to the Austin Lumber Company all his rights of property, of clearance and occupation, and other rights which he might have in the lot.

The deed states that the vendor has handed to the purchaser the location ticket and other titles relating to the land. The sale was made for $325, of which $275 were paid in cash, the balance payable on the patent for the lot being handed to the company. The deed contains a covenant to the effect that the vendor, on receiving written instructions from the company, will burn up the slashing without responsibility for damages and that the company will clean the clearance after the fire and will pay the remaining instalments necessary to obtain the patent.

The company having given no instructions to Thibault, having failed to pay the remaining instalments and otherwise fulfill the conditions necessary to enable the letters patent to be issued, the Crown, on the 26th of March, 1910, gave notice that the location ticket would be revoked.

It would appear that the Austin Lumber Company was at that time in liquidation. Nothing having been done by the company to enable the letters patent to

(1) Q.R. 23 K.B. 80.

be issued, Thibault, himself, fulfilled the remaining obligations, paid the instalments due and, on the 27th April, 1913, obtained letters patent from the Crown for the lot in question.

On the 5th of June, 1912, Thibault sold the lot, for the sum of $900 paid in cash, by the respondent.

The respondent entered into possession of the lot and cut about 900 cords of pulpwood in the course of the summer, autumn and early winter of 1912-13.

On the 24th of February, 1913, the appellant caused a writ of revendication to issue and seized the wood cut claiming it to be his property. The declaration alleged that he is the only true proprietor of lot 35, of range 1, of the Township of Arago, and of all the wood which had been cut thereon; that the respondent had illegally caused the wood to be cut and was about to remove it; and by his conclusions he asked to be declared the proprietor of the wood and that the attachment be declared binding.

The respondent pleaded to the action alleging that the wood was worth $5 a cord, of which $3.25 represented the cost of cutting and removing it to the place of seizure, and $1.75 the value in the forest. He further pleaded that, the lot having been granted by location ticket to Thibault, he had purported to sell it to the Austin Lumber Co.; that the sale was null and void because the company had bought the lot for commercial purposes, contrary to law, because the company already possessed at the time of the sale more than three lots held under location ticket obtained from the Crown, and because no transfer of the lot or location ticket from Thibault to the company had been made as required by law; that the pre-

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tended sale by the liquidator of the Austin Lumber Co. to the appellant was void for the same reasons; that the Austin Lumber Co. had failed to fulfill the conditions under which it had acquired Thibault's rights, and that, thereupon, Thibault had himself fulfilled the necessary conditions and had obtained the patent in his own name. That the respondent had purchased from Thibault, who was, and always had been, the sole owner of the lot; that in any event, the appellant could not revendicate the wood or obtain the ownership thereof without paying to the respondent the sum of $2,925, which he had paid for the manufacture of the wood and its cartage to the river banks.

The respondent further pleaded, that though under no obligation to do so, he would be prepared, provided the appellant withdrew his action, to pay the sum of $275 which had been paid to Thibault and $50 interest, and deposited the sum of $325. By his conclusion, the respondent asked that the pretended sale of the 11th of August, 1909, of Thibault's rights under the location ticket should be declared illegal and void, that the sale of the lot by the liquidator of the company to the plaintiff should also be declared illegal, and that he, the respondent, should be declared the true proprietor of the lot, that the writ of revendication be quashed and the plaintiff's action dismissed and, alternatively, that if the plaintiff's title was declared good he should be condemned to reimburse the sum of $2,925, cost of manufacture and transportation of the wood.

The appellant answered admitting that the wood was worth $5 a cord, alleging that the illegality of the transfer by Thibault to the company could only be raised by the Crown and he further pleaded the chain

of title in favour of the company and from the liquidator to him already referred to.

The trial judge held that the Austin Lumber Co., its liquidator, and the plaintiff had all failed to fulfil the obligation which the company had contracted towards Thibault and that, the Crown Land Department having given notice of the revocation of the location ticket, Thibault himself had fulfilled the required conditions and had obtained in his own name the letters patent for the lot, and had thereupon sold the same to the respondent; that, notwithstanding that the respondent was aware of the previous transaction with the Austin Lumber Co., it could fairly and legally purchase the lot from Thibault, who had acquired the complete title from the Crown; that neither the appellant nor the Austin Lumber Co. ever were proprietors of the lot, and that the respondent had cut the wood after having acquired the lot and the wood was, therefore, his property and the action was dismissed and the attachment set aside.

On the 15th of November, 1913, this judgment was confirmed by the Court of King's Bench, Cross, J., dissenting.

The Chief Justice of the Court of King's Bench, who gave the judgment of the court, held that the respondent, having acquired the lot from the grantee from the Crown, had a perfect title as against everybody; that all the rights of the holder of the location ticket ceased as soon as the Crown had made a grant of the lot, such rights being effective only so long as the location ticket was in force and until letters patent were issued, that, though the transfer made by Thibault to the company conferred on the latter the right to obtain the letters patent on fulfilling the con-

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ditions required by law, the company had not chosen to fulfill these conditions, and that Thibault, on notice of cancellation of the sale of the lots, had himself fulfilled the conditions. If Thibault had been able to obtain the patent in his own name, it was because the company had not registered the transfer in its favour at the Crown Land Office. That the legal relations existing between the Austin Lumber Co. and Thibault in no way affected the respondent's right to purchase the lot from Thibault, who had a perfect title thereto.

The learned judge further held that the transfer by Thibault to the Austin Lumber Co., of the location ticket issued in his favour was void because the company already held more than 300 acres of Crown lands in virtue of location tickets transferred to it, and he was of opinion that this fact was the reason why the company did not register the transfer obtained by it.

Mr. Justice Cross would seem to have rested his judgment on article 1488 of the Civil Code, and to have been of opinion that the issue of letters patent in favour of Thibault availed to perfect the appellant's title even as against third persons. He was also of opinion that the prohibition contained in the law against acquiring more than 300 acres of land under location ticket was one of which the Crown alone could avail itself.

J. E. Martin K.C. and *Ferdinand Roy K.C.* for the appellant.

G. G. Stuart K.C. and *Rousseau* for the respondent.

DAVIES J. (dissenting).—This is an appeal from the judgment of the Court of King's Bench of Quebec

confirming a judgment of Cimon J. of the Superior Court dismissing the plaintiff's action.

The contest was between the parties claiming as assignees of one Thibault, a location ticket holder of a farm or lot of land in the Province of Quebec, of which he subsequently became the patentee. The plaintiff appellant claimed as a purchaser from the liquidator of the Austin Lumber Company, to which company, before the liquidation, Thibault, the location ticket holder, had assigned the located farm or holding. The respondent claimed as assignee of Thibault after he had acquired a title to the farm or lot by letters patent from the Crown.

The crucial question which arises on the facts to my mind is whether the assignment from Thibault to the Austin Lumber Company operated to convey to the company all Thibault's interest in the land which he possessed under his location ticket at the date of the assignment, or if it did not and could not convey any such interest whether it operated to assign to the company any interest he might subsequently acquire if he became patentee of the lands.

I have, after much consideration of the facts and the statutes bearing upon them, reached the conclusion that the alleged assignment from Thibault to the Austin Lumber Company was invalid and null and that the respondent, Stewart, as the purchaser of the lot from Thibault after he had become its patentee had a right to the timber cut and in dispute.

Having reached this conclusion, I have not deemed it necessary to touch upon the other interesting questions which were raised and argued at bar. The important facts and their dates are as follows:—

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Location ticket granted Thibault.....29 April, 1908
Austin Lumber Company incorporated under letters patent from the Dominion of Canada .....12 March, 1909
Sale and assignment from Thibault to company .....11 August, 1909
Winding-up order, Austin Lumber Company prior to .....Feb., 1910
Authority to sell assets of company granted liquidator .....2 Feb., 1910
Sale by liquidator to Howard, including lot in question.....19 Oct., 1910
Letters patent of lot to Thibault.....27 April, 1912
Conveyance Thibault to Stewart (deft.) . .5 June, 1912
Suit commenced .....23 Feb., 1913
Statute of 1909 assented to.....29 May, 1909

The ground upon which I hold this appeal must fail is that the interest of the locatee, Thibault, was not such as could be assigned by him to the Austin Lumber Company, because that company was incompetent to become a settler of lots or locations within the statute, and incompetent to become the assignee of a *bonâ fide* settler who had obtained a location ticket. Such company was incompetent to fulfil the conditions necessary to enable a location ticket holder to obtain a patent of the lot located.

In other and shorter words, I am of the opinion that it was equally impossible for such a commercial company as the Austin Lumber Company to become a location ticket holder or the legal assignee of one who had become such and that the attempt to become the latter as in the case before us was in direct violation of the policy of the law.

I am also of the opinion that the sale and assign-

ment from Thibault to the company cannot be supported on the ground that it was a sale of future rights which he might acquire by fulfilling personally the conditions of his location ticket and obtaining his patent. No such contract was contemplated by the parties and no such contract can, in my judgment, be evolved out of the assignment. Thibault gave the company what the parties intended and what I think they fairly expressed in the transfer, and that was an assignment of

> all the rights of property, clearing, occupation, or other rights, whatsoever, which the seller may have on lot No. 5, in the first range of the Township of Arago, County of L'Islet, and also the buildings thereon erected and the seller has this day remitted to the company the location tickets and other titles relating to said land.

He was selling and assigning his interest in the lands he held under his location ticket and handing over and assigning the ticket itself, the evidence of his ownership. That interest at the time was doubtless small, but by continued occupation and the clearing of a certain quantity of the land yearly it would in five years ripen into a right to obtain a patent. But such rights as might subsequently mature or arise by virtue of the subsequent performance by him of the conditions of the location ticket as to which the agreement said nothing were not intended to be assigned and were not assigned.

There was not the least intention in my judgment in the minds of either party that Thibault was selling and the company was buying a future interest only in the land dependent on and arising out of the patent if it ever was earned and issued. What they were dealing in and with were the then present existing rights of Thibault as a location ticket holder, and these are

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just the rights which I say the Austin Lumber Company was incompetent to purchase and which the policy of the law did not permit Thibault as a location ticket holder to sell to any person but a *bonâ fide* settler.

The right to become patentee of the homestead lot depended, as I have said, upon the performance of subsequent conditions as to clearing the land and paying the purchase money to the Crown. It was not stipulated or intended that Thibault should do those things or any of them. He was transferring all his then interest in the location and he agreed to do what in him lay to obtain the patent if and when the subsequent conditions were performed by the transferee. If the company was a "*bonâ fide* settler" within the meaning of the statute it could then take a legal assignment of the interest of Thibault, the original settler. That would create a very different condition of things, and the construction to be put upon the assignment might in such case be different in the event of Thibault subsequently getting the patent in his own name. But if the company could not become a transferee, not being a *bonâ fide* settler, then I take it that the assignment, being illegal as against the policy of the law, could not be invoked to create a right as arising out of the subsequent granting of the patent.

I take it that the location ticket holder could by apt words in his contract of assignment assign to one admittedly not a *bonâ fide* settler any future interest which might accrue to him if and when a patent of the land issued to him. The policy of the law did not prevent that. Being patentee he became the owner with all an owner's rights and, of course, there was nothing

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to prevent him selling those contingent rights before they accrued or came into being. But as a locatee only he was in a sense a ward of the State, protected by law against speculators and others and prohibited as a matter of public policy from parting with his rights to others than *bonâ fide* settlers with whom it was the clear and expressed policy of the legislature to settle the "lands of the province suitable for cultivation."

The fact that in 1909 the legislature enacted a further amendment to the then existing statute providing that lots sold or otherwise granted for settlement after the first day of July, 1909, should not for five years following the date of the location ticket or otherwise be alienated wholly or in part "except by gifts *inter vivos* or by will or by *ab intestate* succession," and that in these cases the donee, heir or legatee should be subject to the same prohibition as the original grantee; and that every transfer made in contravention of that article should be absolutely null between the parties only seems to me to accentuate my argument as to the policy of the law. It is now illegal for a locatee subsequent to July, 1909, to sell even to another *bonâ fide* settler. Before this such a sale was or might be valid if approved of by the Commissioner of Lands. Since then not even such a sale could be upheld.

The enlargement of the prohibition from a partial to an absolute one cannot be invoked as an argument against the previous existence of the partial prohibition —and so it will not do to assume that because the legislature in 1909 enacted absolute prohibition of the transfer of these location tickets that partial prohibition did not previously exist.

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Altogether apart from the right of the locatee to assign, I cannot see where or from whence the Austin Lumber Company received the power or capacity to enter into such a contract as that made by it with Thibault, the locatee.

That company was incorporated by letters patent from the Dominion of Canada and from these its powers and capacities must be determined.

These letters patent express and define the purposes and objects of the company as follows:—

1. To own or lease or operate and develop timber limits and water powers.

2. To carry on the business of lumberers, or manufacturers of, and dealers in logs, timber and lumber of every description, and products thereof and anything in which the products of the forest forms a part.

3. To acquire as a going concern or otherwise all the assets and good will of the partnership formerly existing and known as "The Austin Lumber Company, Limited."

4. To carry on any other business germane to the aforesaid objects.

5. To manufacture electric current, electric or other heat or power for the purposes of the company.

6. To hold and own shares or securities in any other company carrying on business similar to that which this company is hereby authorized to carry on.

I frankly confess myself unable to understand what construction of these purposes and objects can be made to include the purchase of a lot of a location ticket holder under the Quebec Act, such as Thibault was, a homesteader, as he is called in other parts of Canada. The

owning, leasing, operating and development of timber limits and water powers, carrying on of the business of lumberers, etc.,

and

the carrying on of any other business germane to the aforesaid objects

cannot in my judgment, under the most liberal construction of these powers, be extended to embrace the purchase by the company of the lots set apart and given to a locatee for a homestead and for settlement. These locations were for a special object and purpose clearly defined and set forth in the statute. They were to be given only out of lands "suitable for cultivation" and only to "*bonâ fide* settlers." The purpose and policy of the legislature was to create homesteads for the persons to whom they were given and such other qualified persons as they might legally assign them to.

It is contrary, in my judgment, to the clearly declared policy of the Act that persons and companies disqualified from receiving these location tickets should become the owners of them by purchase from the locatee. Only such persons as were entitled to become locatees could become assignees of the locatee until, of course, the patent for the location was granted.

Prior to the amending Act of 4 Edw. VII. (1904), ch. 13, the statute, sec. 1269, R.S.Q. (1888), authorized the granting of a "location ticket" subject to the approval of the Commissioner, to

> *any person* who asks to purchase a lot of public lands for colonization purposes.

That amending Act of 1904 made some vital changes in the policy to be adopted in the granting of these location tickets. By article 7 it was provided that the Lieutenant-Governor-in-Council might make a classification of public lands in the following manner:—

1. Lands suitable for cultivation;
2. Lands for forest industries;

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and provided (art. 1268(*b*)) that no sale could after the classification authorized by the preceding article be made for colonization purposes outside the lands suitable for cultivation and classified as such.

Section 8 of this Act replaced article 1269 of the Revised Statutes as amended by a new clause as follows:—

> 1269. Upon the conditions and for the price established by the Lieutenant-Governor-in-Council, the Crown lands' agent, if there is no contestation, is bound, after the classification authorized by art. 1268(a) to sell the lands suitable for cultivation and classified as such and before such classification lands suitable for cultivation, *to any bonâ fide settler* who applies for the same. No such sale can be made of more than two hundred acres to the same person.

This was the law in force when the location ticket was issued to Thibault and the assignment made to the Austin Lumber Company. Since that time lands either classified as suitable for cultivation, or if before classification, lands suitable for cultivation could be located to *bonâ fide* settlers only — and only to such *bonâ fide* settlers in quantity not more than 200 acres, subsequently increased to 300.

The policy here defined of limiting such sales to *bonâ fide* settlers only, necessarily in my judgment limited the power of assignment given to the locatee to other persons who could come within the same category, namely, *bonâ fide* settlers, until the locatee by his clearances and payments earned his right to his patent. Any other construction would defeat the policy, object and purpose of the Act. The object of the amendment clearly was to insure that lands suitable for cultivation should be kept out of the hands of speculators and of lumbermen and lumber companies whose business would be confined to the second classification, namely, "lands for forest industries."

It was a well intentioned effort to place *bonâ fide* settlers upon those lands of the province "suitable for cultivation" and to provide against speculators or other than *bonâ fide* settlers getting location tickets for those lands either directly or indirectly. It was not, therefore, in my opinion, open to an ordinary lumberman not desiring to become a *bonâ fide* settler and *a fortiori* not to any of the large lumber companies or to speculators in lands to obtain the lands settled by *bonâ fide* settlers by assignments from them after they obtained their location tickets and before getting their patents. I do not, for one, feel disposed to thwart the clearly declared and defined policy of the legislature by a construction limiting the granting of the location ticket to a *bonâ fide* settler and at the same time permitting any one not such to obtain from the settler an assignment of all his rights in the land immediately after the issue of the ticket or license.

If the slightest doubt is felt upon the point, it will, I think, be set at rest by reading section 1269(*a*), which says:—

> 1269(a). Before making the sale the Crown lands' agent shall require the settler to make a declaration under oath in the Form E.; and the Crown lands' agent is authorized to receive the settler's oath.

Turning to Form E. in the Schedule to the Statute of 1904, we find that the desiring locatee is required to swear to his age and residence, his wish to acquire a specified lot, his opinion

> that it is fit for cultivation and does not derive its chief value from the timber thereon,

that he is already the owner of certain lots under location ticket specifying them *and that he is not lending his name to any person for the purpose of*

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acquiring such lot, and that he is not acquiring such lot for the sole purpose of trafficking in the timber, but *with a bonâ fide object of settling thereon.*

This was the law in force at the time this location ticket to Thibault was granted and the assignment made by him to the Austin Lumber Company and I cannot myself yield to the argument submitted by the appellant's counsel to us that while that company could not become a locatee it could legally become the assignee of one.

Such an argument, if accepted, would defeat and destroy the whole policy of the law as clearly declared and defined by the legislature, a policy so meritorious and in the public interest that I decline to be a party to defeating it by frittering away the express terms of the statute.

I do not, therefore, think the Lumber Company was a competent locatee or could become the legal assignee of one. I do not think the Austin Lumber Company, by the terms of its charter, was any more competent to accept an assignment of one of these locations given to a *bonâ fide* settler for the purpose of settlement, than it was for it to purchase an interest in a coal or silver mine or in one of the large mercantile or shipping establishments of Montreal. Such a dealing was clearly outside of the express purposes and objects for which it was incorporated and also of those necessary and incidental powers which flow from them. It was not "germane" to any of the specified powers granted to the company by letters patent. I deny, therefore, the competency of this company to enter into this contract or to accept this assignment. If I am right that contract was wholly void. See *Ash-*

bury Railway Carriage and Iron Co. v. *Riche*(1). In that case Lord Chancellor Cairns quotes with approval as summing up and exhausting the whole question the following statement of law as stated by Mr. Justice Blackburn:—

> I do not entertain any doubt that if, on the true construction of a statute creating a corporation it appears to me to be the intention of the legislature, expressed or implied, that the corporation shall not enter into a particular contract, every court, whether of law or equity, is bound to treat a contract entered into contrary to the enactment as illegal, and therefore wholly void, and to hold that a contract wholly void cannot be ratified.

Nor apart from that can I accede to the argument which I understand has found favour with at least one of my colleagues, that while the assignment of the location ticket and the locatee's interest under it was inoperative or ineffective, it should be so construed as to operate as an assignment of the interest of the assignor as and when he became the patentee of the lands.

I have already shewn that the assignment only professed to deal with the assignors' then present interest, and that such an interest only was what the parties were bargaining for and had no relation to any subsequent interest he might obtain by a payment subsequently of his own moneys and the performance subsequently by him of those homestead duties necessary to obtain a patent and with respect to which naturally no reference was made in the assignment and lastly, that if the assignment or transfer is in itself illegal and void so far as relates to the interest of Thibault as a locatee it cannot be made the basis on which to construct an argument that it operates to

(1) L.R. 7 H.L. 653.

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assign the subsequent interest accruing to Thibault under his patent. Such an interest might be granted by locatees to parties competent to receive them — but if so the intention to reach such ulterior interest must be fairly shewn on the face of the assignment and by apt language.

I would dismiss the appeal and confirm the judgment of the Superior Court and Court of King's Bench.

IDINGTON J.—Each of the parties hereto claims title through Thibault, who was admittedly the locatee of the Crown pursuant to the provisions of the sections of the law concerning the sale and administration of public lands.

It is contended for appellant that the locatee was a purchaser from the Crown of the lands in question and entitled to make a sale of the land he so acquired, and that he did so in such manner that the moment he got his patent therefor, the title enured to the benefit of appellant.

This is denied by respondent, who further contends that the sale by Thibault being to a commercial company which could not itself do settlement duties, was illegal.

If this latter proposition is well founded the appellant's claim must fail as resting upon an illegal transaction.

It is clear that a locatee could sell to one who could perform the duties. It is impossible to say that there is any express legislative enactment prohibiting the locatee in question from selling to another who was not qualified to settle or perform settler's duties.

Such an enactment, article 1281(*a*), R.S.Q., was

passed by the legislature in 1909, but it only extended to lots sold or otherwise granted for purposes of colonization after the 1st of July, 1909, although assented to May, 1909.

This location now in question was made in 1908.

I do not think it can be laid down as law that simply because the legislature so expressly enacted, it must necessarily be held that the prohibition had not previously existed by implication or otherwise.

I do think, however, that the first express enactment being so framed is very suggestive.

Indeed it puzzzles one to see why if it was always illegal there should have been any hesitation about declaring it so, and, that instead thereof, the legislature should put, as it did, an express limitation upon the time of its becoming operative.

It was by the same enactment that the rights of selling in any case were much curtailed and transfers were limited to cases of donation *inter vivos* or by will or succession, etc., etc., or by the express authority of the minister, etc.

It seems to be suggested by all this that there had been abuses, yet that these transactions which had constituted the abuse, were to be permitted to stand, though the policy of the legislature was to be changed as to the future.

It is said that there was no means of registration in the Crown Lands Department of any such transfer as the Austin Lumber Company got from Thibault. Assuming that to be so, how does it constitute prohibition of such a contract ? The inability to register does not in the absence of some express legislation on the subject invalidate a contract or in

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any way affect its operation as between the parties thereto. And registration only furnishes security against possible third parties claiming under some provision of the "Registry Act," priority, by virtue of registration.

Moreover we have this curious piece of legislative history bearing upon that very question. In 1904 it was enacted by section 1275(*a*) that transfers by first purchasers must be transmitted to the department within thirty days on pain of nullity, but this was repealed in 1906 and so far as I can find, never again re-enacted.

Then it is said that the policy of the law in relation to the locatee and his right to transfer is such as to render the transfer from Thibault to the Austin Lumber Company illegal.

I am unable to see how we can find such alleged policy of the law unless by express legislation, or clear implication thereof, cutting out the usual operative effect which the law gives to the contracts between parties.

All that has been done by way of legislation relative to the relations between the Crown and such purchasers as Thibault is to require that he settle on the land, and from year to year, for a term of years, perform specified duties in the way of clearing and building and residence, before he becomes entitled to receive his patent.

Those duties he binds himself to the company to fulfil and thus discharged all that the policy of the law required, by its express provision. To read something further into the law is to put something there not provided or implied by the language of the statute.

This leaves it open to the settler to contract with

third parties in regard to the lands either in way of sale or promise of sale.

The form of contract adopted in this case certainly was not a mere promise of sale. It would be doing violence to the language so to construe it.

It is as absolute in form in the first part of the instrument as words can make it. In the latter part of it there is a sentence binding Thibault to perform the duties required to be done by him to entitle him to get the patent and thereby complete the title he has warranted.

It seems to fulfil the terms of article 1025 of the Code, which expressly anticipates the possibility of non-delivery.

Then the obligation of Thibault is thereby rendered possible of performance without impeding the effect designed by said article to be given to the sale.

This article, as well as article 1026, is by article 1027 shewn to be applicable to the rights of third parties, saving in relation to immovable property, the special provisions contained in the "Code for the registration of titles to and claims upon such property."

I shall presently advert to that phase of the questions involved herein, but before doing so desire to point out that the several sections of the statute governing the management and sale of the Crown lands expressly treat the transaction between the Crown and the locatee as a sale.

In section 1268, R.S.Q., 1888, provision was made for the Lieutenant-Governor-in-Council fixing the price per acre of public lands and the terms and conditions of sale and settlement and payment, and subject to minor changes and modifications such has re-

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mained the key-note, as it were, to dealing with Crown lands.

Section 1269 provided for Crown lands' agents selling upon the conditions and for the price regulated.

Section 1270 of same statute provided as follows:—

> The Commissioner may issue, under his hand and seal, to any person who has purchased, or may purchase, or is permitted to occupy, or has been entrusted with the care or protection of any public land or to whom a free grant was made, an instrument in the form of a license of occupation, and such person, or the assignee, by an instrument registered under this chapter or any other law providing for registration in such cases, may take possession of and occupy the land therein comprised, subject to the conditions of such license, and may thereunder, unless the same shall have been revoked or cancelled, maintain suits at law against any wrongdoer or trespasser, as effectually as he could do under a patent from the Crown.
>
> Such license of occupation shall be *primâ facie* evidence of possession by such person or the assignee under an instrument registered as aforesaid in any such suit, but the same shall have no force against a license to cut timber existing at the time of the granting thereof.

Section 1274 provided for the registration of transfers made by the original purchaser or locatees of their rights.

4 Edw. VII., ch. 13, sec. 7, directed the Lieutenant-Governor-in-Council to make a classification of public lands. And 1268(*b*), in the same section was as follows:—

> 1268(*b*). No sales can after the classification authorized by the preceding article, be made, for colonization purposes, outside the lands suitable for cultivation and classified as such.

Section 8 contains the following provision in substitution of previous legislation on the same subject:—

> 8. Article 1269 of the Revised Statutes, as amended by the Acts 60 Victoria, chapter 22, section 14; 63 Victoria, chapter 14, section 1, and 1 Edward VII., chapter 8, section 7, is replaced by the following: "1269. Upon the conditions and for the price established by the Lieutenant-Governor-in-Council, the Crown lands' agent, if there is no contestation, is bound, after the classification authorized by article 1268(*a*), to sell the lands suitable for cultivation and classi-

fied as such, and before such classification lands suitable for cultivation, to any *bonâ fide* settler who applies for the same. No such sale can be made of more than two hundred acres to the same person.

"The sales made by the agents take effect from the day upon which they are made; but, if the location ticket contains any clerical error or an error in the name, or an incorrect description of the land, the Minister may cancel the location ticket and order the issue of a new one, corrected, which will take effect from the date of the former one.

"1269(*a*). Before making the sale the Crown lands' agent shall require the settler to make a declaration under oath in the Form E; and the Crown lands' agent is authorized to receive the settler's oath."

Then by section 1588 of the R.S.Q., 1909, we find the following provision:—

1558. Before making the sale, the Crown lands' agent shall obtain from the settler an affidavit according to Form A; and the Crown lands' agent or a notary may receive the same. R.S.Q., 1269(*b*); 9 Edw. VII., ch. 24, sec. 2.

That affidavit has been varied slightly, but the substance of it shews as it existed at the time of the grant of this location in question that the applicant wished to acquire a lot fit for cultivation, not deriving its chief value from the timber thereon and to acquire in his own name for the purpose of clearing and cultivating for his own benefit, and that he was not lending his name to any person for the purpose of acquiring such lot, and had no understanding with any one in that respect and was not acquiring it for the sole purpose of trafficking in the timber, but with the *bonâ fide* object of settling thereon.

In argument stress has been laid upon this affidavit. All it amounts to is that the applicant has an honest purpose at the time of making the application as specified in the affidavit. There is no pledging or promising in reference to the future disposition of the lot or the improvements. If it had been shewn that this locatee, Thibault, had conceived the purpose of

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selling to the Austin Lumber Company when he made his affidavit, the transaction, of course, would be fraudulent. Nothing of the kind appears in this transaction. I, therefore, fail to see any argument that can be founded upon this affidavit when we have in view the actual facts of this case. The affidavit itself is in harmony with the general expressions relative to sales used in the foregoing statutes.

In face of such legislation as I have recited at length in order to realize its purport and the nature of the right acquired thereunder, it seems to me impossible to treat the location ticket as a mere license of occupation or something less than a sale.

Once the locatee had observed the obligations imposed upon him he was entitled as of course to get his patent. If he failed in discharging these obligations the Minister might under the provisions of some of the Acts now appearing in article 1574 of the Revised Statutes, revoke the sale.

Such is the letter of the law and I ask how can we constitute the transaction other than a sale? True, the cancellation does not proceed upon the basis of the ordinary right of dissolution of a contract for non-fulfilment of conditions. Article 1576 of the statute excepts it from the operation of article 1537 of the Civil Code.

But no other provision I can find seems to take the transaction in other relations out of the operations of the Civil Code.

That brings us to what seems to me the crucial question in this case which arises from the fact that the transfer from Thibault to the Austin Lumber Company was registered, and also that from the assignee of that company to appellant (which it may be noted

was judicially directed) before the patent, and before the transaction between Thibault and respondent, by virtue of which he claims.

If the registry provisions of the Code had expressly provided that they must be held as restricted to titles acquired subsequently to the issue of the patent, then the registrations antecedent thereto could be treated as of no avail. But I can find no such restriction. They treat all titles alike and consequently the title which begins with the location ticket is to be treated as the root of title when effect is to be given to registration controlling the operation of article 1025 as provided in article 1027.

Leaving the latter provision and all implied therein out of the question, there was a sale by the Crown to Thibault and by him to the Austin Lumber Company and its assignee or the judicial sale which he was directed to effect to the appellant, which, on a proper application of the principles laid down in the Code, precluded respondent from acquiring any title.

Thibault had thereunder none to give and he could confer none.

It is suggested default had been made by the Austin Lumber Company in failing to make the necessary payments the contract provided for and, hence, liable to rescission. But there was no term of the contract within article 1536 which enabled Thibault as of course to dissolve and disregard his contract of sale and no other way such as provided by article 1557 was pursued by him. His grantee, the respondent, can be in no better position. And, therefore, it seems to me such default did not give respondent what he claims.

I think the appeal must be allowed with costs, but subject to such terms of repaying the respondent for

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his improving the value of the property by the expenditure in cutting of the timber as he may be found entitled to.

DUFF J.—I am unable to concur in the view of the majority of the Court of King's Bench. I can find no evidence in the record to shew that the Austin Lumber Company are holders of more than the permissible number of location tickets. I am also unable to concur in the view that the rights of the Austin Lumber Company were extinguished by the issue of the patent. I think the assignment to the Austin Lumber Company had not the effect of presently transferring any *jus in re* in the property in question. I have no doubt that the locatee's right was in the nature of a *droit réel,* but a right nevertheless which was subject to all the conditions and characteristics arising out of the provisions of the statute under the authority of which the right was created. As I read the statute the locatee, so long as he remains locatee, that is to say, so long as the location is vested in him, is incapable of creating any *jus in re* in respect of it. He may transfer his location, it is true, and with a proper approval, the location may become vested in the transferee, but it is only by such a transfer that any proprietory interest in the location can before the issue of the patent be effectually vested in another.

It does not, however, by any means follow from this that the locatee may not enter into a contract of sale before the issue of the patent under which the provisions of article 1488 C.C., will have the effect of transferring the property as soon as the patent issues; and that I think is what happened in this case. The moment the patent issued the title of the patent be-

came vested by virtue of the existing contract in the Austin Lumber Company. That brings us to the question which has given rise to the only difficulty I have felt in the case, viz., whether the right of the Austin Lumber Company was lost by reason of the registration of Stewart's deed of sale. The point which presents itself to my mind is this: Article 2098 C.C., provides:—

"So long as the right of the acquirer has not been registered, the registration of all conveyances, transfers, hypothecs or real rights granted by him in respect of such immovable is without effect.

Does this mean that the registration whose validity is in question is simply inoperative; or does it mean that it is not effective until the registration of the prior title If the first, then the registration of the transfer to the Ausin Lumber Company before the issue of the patent would have no effect, if this is one of the class of cases to which the article above qnoted applies. Now it seems a fair construction of this article, taken together with article 2084, C.C., to hold that it has no application to cases in which the prior title rests upon an instrument to which the provisions of article 2084, C.C., apply. In that view the registration of the patented title would not be required. I think, however, the more satisfactory construction of article 2098, C.C., is that, where the prior title is not registered, the registration of a transfer of that title does not take effect until the prior title is registered. On this construction the appellant is relieved from any difficulty that might arise as to the provisions as to registration.

ANGLIN J.—The question for determination in this action is the ownership of lot 35, range 1, Arago, in the County of L'Islet.

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The following appear to be the material facts which are uncontested:—

A location ticket for the lot was duly issued by a Crown lands' agent to one Amédée Thibault on the 29th April, 1908. In disposing of the land to Thibault the Crown lands' agent proceeded under the statute then in force (art. 1269 of the Revised Statutes, as enacted by 4 Edw. VII. ch. 13, sec. 8) which empowered Crown lands' agents to sell lands suitable for cultivation and classified as such and declared that the sales made by the agents take effect from the day on which they are made. Thibault paid to the agent the first of the four instalments into which his purchase money was divided. On the 11th of August, 1909, he sold and conveyed his rights and interest in lot 35 to the Austin Lumber Company for $325, of which he received $275, the balance being made payable on the issue of the Crown patent for the lot. By the deed Thibault undertook to burn the fallen timber (*l'abatis*) on the property and the company to clear the land afterwards and to pay to the Crown the three further instalments necessary to procure the issue of the grant, which Thibault promised diligently to facilitate. The Austin Lumber Company becoming insolvent, its liquidator on the 19th Oct., 1910, with judicial sanction, sold and conveyed the lot in question, with other property of the company, to the plaintiff Howard. These two deeds appear to have been recorded in the registry office at St. Jean Port Joli, as Nos. 37757 and 38616 respectively, but they were not registered in the Department of Lands and Forests, as is provided for by articles 1563 *et seq.* of the R.S.Q., 1909. The Austin Lumber Company did not fulfil the conditions of the sale by the Crown to Thibault, and notice

was given on the 26th of March, 1910, of the intention of the Crown to cancel the location ticket of the lot. But actual cancellation did not take place and Thibault upon paying the balance of the price and satisfying the Department as to the fulfilment of the conditions of sale, obtained a Crown patent for the lot in his own name on the 27th of April, 1912. On the 5th of June following Thibault sold the lot to the defendant Stewart for $900. The conveyance to Stewart was registered. Stewart knew when he purchased of the prior sales by Thibault to the Austin Lumber Company and by the liquidator of that company to the plaintiff Howard.

In the Superior Court Cimon J. held that the issue of letters patent to Thibault enabled him to confer an incontestable title on the defendant Stewart. In the Court of King's Bench Archambault C.J., who spoke for the majority of the court (Cross J. diss.), affirmed the judgment for the defendant on the ground taken by Cimon J. and also on the additional ground that at the time of the transfer to it from Thibault the Austin Lumber Company already held 300 acres of unpatented colonization lands and that the transfer to it of lot 35 by Thibault was therefore null and void under art. 1565, R.S.Q., 1909.

At bar it was also argued that article 2085, C.C., is conclusive in favour of the title of the defendant; that the transfer to the Austin Lumber Company was void because that company acquired the land for commercial purposes and not for the purpose of colonization; and that the transfer from Thibault to the company was of a property which he did not own and therefore void under article 1487, C.C. — that it was

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not a sale, but a mere promise of sale and that article 1488, C.C., does not apply to it.

I shall deal with these several points in the order which seems most convenient.

Prior to the legislation, 4 Edw. VII., ch. 13, sec. 8, there appears to have been some doubt in the jurisprudence of the Province of Quebec whether the transactions evidenced by location tickets obtained by settlers from Crown lands' agents should be deemed conditional sales or merely promises of sale. The judgments of Meredith, C.J., Casault and McCord JJ., in *Dinan* v. *Breakey*(1), favour the former view; whereas in *Gilmour* v. *Paridis*(2), Dorion C.J. says that such location tickets are in effect promises of sale, and Tessier J. speaks of the settlers holding them as quasi-proprietors. On appeal to the Privy Council the judgment of the Court of King's Bench was affirmed, but the nature of the plaintiff's title was not adverted to further than in the statement that it was sufficient to carry with it the right of protection by injunction(3). But since the legislation of 1904 I have little doubt that the transactions evidenced by location tickets issued under it to settlers by Crown lands agents are sales — conditional, it is true, but veritable sales.

In several of the articles of the Revised Statutes, 1909, notably articles 1556, 1557, 1558, 1563, and 1574, these transactions are designated as sales. In article 1574 provision is made for their cancellation and by article 1576 it is declared that this

> right of revocation shall not be deemed an ordinary right of dissolution of a contract for non-fulfilment of conditions.

(1) 7 Q.L.R. 120. (2) M.L.R. 3 Q.B. 449.
(3) 14 App. Cas. 645, *sub nom. Gilmour* v. *Mauroit.*

But whatever may be the true legal concept of the contract entered into between the Crown and the settler, the statute clearly recognizes in articles 1563 and 1565 that the latter has a saleable and transferable interest in the land. In article 1563 he is spoken of as the purchaser and in article 1565 as the proprietor. By the statute, 9 Edw. VII., ch. 24, sec. 4 (art. 1572, R.S.Q.), restrictions were placed on the sale of land subsequently located by settlers. While all these provisions seem to uphold the view that what took place in April, 1908, was in reality a sale of lot 35 to Thibault, it is perhaps unnecessary to determine whether under his location ticket he held as upon a sale subject to resolutory conditions or as upon a promise of sale. In either case it is clear that he had a saleable and assignable interest. I incline to the view that his transfer of that interest to the Austin Lumber Company was not within article 1487 C.C. — that he sold and transferred something of which he was the proprietor. But if he had only such an interest as is conferred by a promise of sale — his transfer of that interest was absolute and no mere promise to sell it; it was in form and substance a sale present and out and out, and I see no reason why article 1488 C.C., should not apply to it, or why, upon Thibault obtaining his patent, if what he had held theretofore was merely a promise of sale, the property should not under his title thus perfected have been forthwith vested in the plaintiff as purchaser from his assignees (articles 1025, 1473 and 1488 C.C.). The declaration of article 1556 of the R.S.Q., that "sales made by (Crown lands') agents take effect from the day on which they are made" is at least consistent with this view. Article 1488, C.C., appears to be declaratory of the law as it stood before

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that article was enacted. See 6 Marcadé, p. 217, No. V.; 1 Troplong, "Vente," No. 326. Although they are not collocated in any table of concordance which I have seen, the first paragraph, article 1025, C.C., is not dissimilar in substance to the main provision of the second paragraph of article 1138, C.N.

The issue of the Crown grant to Thibault, in my opinion, served to perfect and confirm Howard's title and apart from the effect of the registry laws, did not clothe Thibault with capacity to confer upon a purchaser, who took subsequently and with notice of the transactions between Thibault and the Austin Lumber Company and the liquidator of that company and Howard, a title adverse thereto and incontestable by Howard.

As already stated, prior to 1909 (see article 1572, R.S.) the law clearly contemplated and provided for the sale and transfer of the rights of settlers before the issue of letters patent. (Articles 1563 *et seq.*) It has been the constant practice in the Province of Quebec to recognize the right of settlers located prior to July, 1909, to sell and transfer their holdings to purchasers who assume the performance of the conditions upon which the location tickets issued (article 1556). The fact that such purchasers intend, after obtaining patents, to cut the timber on the land for commercial purposes has never been deemed to invalidate such transfers, and if it were now to be held that it did, many titles in the province would be jeopardized. The fact in the present case is that no timber was cut before patent issued and there is nothing in the record to warrant an inference that the Austin Lumber Company when purchasing intended to cut the timber before obtaining the patent for the land.

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I am not prepared, therefore, to deny the validity of the title advanced by the plaintiff on the ground that the transfer from Thibault to the Austin Lumber Company was contrary to public policy.

Neither does article 2085, C.C., in my opinion, preclude the plaintiff's title being set up against the defendant. That article makes the registered title of a subsequent purchaser for valuable consideration good as against an unregistered right of a third party which is subject to registration, although the subsequent registered purchaser has taken with notice or knowledge of such right. If the rights of the Austin Lumber Company were "subject to registration" or susceptible of registration in the registry office of the registry division before patent issued, they were so registered. If their registration there was irregular and ineffectual it was because they were not then susceptible of such registration and not subject to it. Article 2085, C.C., deals with registration in the registry division under the provisions of the articles grouped under the 18th title of the Civil Code, articles 2082 *et seq.* It does not refer to the special registration provided for interests in unpatented lands by articles 1563 *et seq.* of the R.S.Q., 1909. While failure to register under the provisions of the "Public Lands Act" may subject the assignee of an interest in unpatented lands to the risk of losing it in favour of a subsequent transferee before patent who registers his transfer (article 1569), or of a grantee from the Crown after a forfeiture, under article 1574, of the rights of the original or prior locatee, there is no provision in the "Public Lands Act" which protects a person who subsequently to the issue of the patent takes from such original or prior locatee with notice of the

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earlier transfer of his interest. For a short time (1904-1906) failure to register in the department within thirty days a transfer of unpatented land rendered it void. Article 1275(*a*) of the R.S.Q., 1888, as enacted by 4 Edw. VII., ch. 13, sec. 9, so provided; but that provision was repealed by 6 Edw. VII., ch. 15, sec. 2, and has not been re-enacted. Non-registration in the Department of Lands and Forests did not invalidate the transfers from Thibault to the Austin Lumber Company and from that company to the plaintiff. If those instruments were not originally, and did not, upon issue of the patent, become subject to registration in the registry division article 2085, C.C., affords no protection against them; if upon issue of the patent they became subject to and susceptible of such registration, although the recording of them may have been irregular and ineffectual, when it took place, I see no reason why upon issue of the patent to Thibault it should not have been held to have become regular and efficacious. If so, a further answer to defendant's plea under article 2085, C.C., is afforded by the implications of that article itself.

I find nothing either in the articles of the Civil Code or in the provisions of the Revised Statutes invoked by the defendant which warrants the view that a purchaser of patented land from the original locatee thereof who has full knowledge of instruments transferring the locatee's interest in such land executed by him and recorded in the office of the registry division before patent issued may disregard them with impunity and, notwithstanding such knowledge, obtain a title which the persons interested under such instruments cannot successfully contest.

A critical examination of the documents put in

evidence to shew the lands held by the Austin Lumber Company, checking them one with another and with the evidence of the Crown lands agent, Michon, has satisfied me that it is not established that when that company acquired lot 35 (100 acres) from Thibault it already held more than 200 acres of unpatented lands. Except this lot and possibly lots 30 and 36 in the same range of Arago it would appear to have held no unpatented lands. Lots 30 and 36 are mentioned in two documents filed as still unpatented. But Michon says lot 30 was patented as to one-half in 1889 and as to the other half in 1908. The deed from Lefaivre to Howard shews that the Austin Lumber Company acquired lot 36 only on the 27th August, 1909, whereas it acquired lot 35 on the 11th August, 1909. All the other property mentioned in the deeds produced is shewn to have been either land patented before the date of the Thibault deed, land acquired by the company after that date, or land over which it held only the right to cut timber. While I fully agree with the learned Chief Justice of the King's Bench that, if the defendant had shewn that the Austin Lumber Company possessed more than 200 acres of unpatented land in March, 1909, the burden would have been upon it to establish that it had dispossessed itself of such surplus land before taking the Thibault deed in the following month, I am, with respect, unable to accept the view on which the learned judge proceeds that the documents produced clearly establish that the company owned more than 200 acres of unpatented land in March, 1909. I find that this allegation of the respondent was contested in the factum of the appellant in the Court of King's Bench as it was at bar in this court. It has,

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therefore, not been established that the deed from Thibault to the Austin Lumber Company was in contravention of the third paragraph of article 1556 of the R.S.Q.

If the notice of intention to cancel given under articles 1577 and 1578, R.S.Q., had been followed by actual cancellation under article 1574, so that the title of Thibault under his patent might be deemed the outcome of a new sale by the Crown, it may be that the rights acquired by the Austin Lumber Company and the plaintiff would have been thereby extinguished. But no such steps were taken. On the contrary, as is deposed to by Crown lands agent, Michon, lot 35 always remained registered in the department in the name of Thibault from the date of his location ticket, April 11th, 1908, and the grant which he obtained on the 27th April, 1912, was made in fulfilment of the contract of sale evidenced by that location ticket.

In my opinion the title of the plaintiff Howard has been fully established and is not open to attack upon any of the grounds preferred by the defendant. The appeal should be allowed with costs throughout and judgment should be entered for the plaintiff, granting the conclusions of his declaration.

The appellant does not contest the right of the defendant to be reimbursed the cost of cutting and floating the timber in question.

BRODEUR J.—Nous avons à considérer dans cette cause si un colon peut, avant l'émission des lettres patentes vendre sa terre et nous avons aussi à l'examiner si le défaut d'enregistrement, au département des Terres, de cette vente peut empêcher l'acquéreur

de réclamer contre un tiers qui a aussi un titre du même colon.

Je dois dire de suite que si la concession du lot avait été faite après le 1er juillet, 1909, la question se résoudrait bien facilement; car l'article 1572 des Statuts Refondus de Québec de 1909 déclare bien formellement que

> les lots vendus ou autrement octroyés pour fins de colonisation après le 1er juillet, 1909, ne peuvent pendant cinq ans, à compter de la date du billet de location, être vendus par le porteur du billet de location.

à moins que la vente ne soit autorisée par le ministre.

Mais le billet de location dans la présente cause été émis l'année précédente, en 1908. Voici d'ailleurs les faits importants du litige.

Le 29 avril, 1908, le nommé Thibault a demandé à l'agent des Terres de la Couronne à Montmagny de lui vendre le lot No. 35 du premier rang du Canton Arago. L'agent, aux termes de l'article 1269 des Statuts Refondus de la province de Québec de 1888, tel qu'amendé par la loi de 1904, ch. 13, sec. 8, lui a vendu le terrain en question aux conditions ordinaires d'habitation, de paiement et d'établissement, avec pouvoir pour le ministre de résilier la vente et d'annuler le billet de location si le colon ne remplissait pas ces conditions.

Le 11 août, 1909, Thibault a transporté à la corporation "Austin Lumber Company," par acte notarié, tous les droits qu'il avait dans ce lot de terre, pour $325, dont $275 comptant et la balance payable lors de la remise des lettres patentes que Thibault s'engageait d'obtenir en son nom du département des terres.

Cette compagnie devait, de son côté, faire les trois paiements annuels que Thibault devait encore au gouvernement.

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Peu de temps après ce contrat entre Thibault et la Compagnie "Austin Lumber," cette dernière fut mise en liquidation; et le liquidateur, le 29 octobre, 1910, vendait, par autorisation de justice, à Howard, l'appelant, l'actif de cette compagnie, y compris le lot No. 35.

L'acte de vente de Thibault à la compagnie "Austin Lumber," ainsi que l'acte de vente du liquidateur a Howard, ont été enregistrés au bureau d'enregistrement du comté sous les dispositions de l'article 2098 de Code Civil; mais, par contre, ils n'ont pas été enrigistrés ou Département des Terres de la Couronne, suivant les dispositions des articles 1563 et suivants des Statuts Refondus de 1909.

Les paiements qui devaient être faits annuellement n'ayant pas été effectués, le département donna avis à Thibault qué la ministre allait résilier la vente, et alors ce dernier, s'autorisant du fait que la Compagnie "Austin Lumber" ne lui donnait pas d'argent pour faire ses paiements, ainsi quelle s'y était obligée, a fait les versements avec son propre argent et a pris la patente.

Au lieu cependant d'aller remettre cette patente à la compagnie, comme il y était obligé en vertu de son contrat du 11 août, 1909, il a revendu la propriété à l'intimé Stewart.

Ce dernier a, dans l'hiver suivant, coupé environ 850 cordes de bois sur cette propriété; et Howard le poursuit pour être déclaré propriétaire de ce lot et du bois qui y a été coupé par Stewart et accompagne sa demande d'une saisis-revendication.

La Cour Supérieure et la Cour d'Appel, le juge Cross dissident, ont renvoyé cette action. Howard appelle devant cette Cour de ce jugement.

J'en suis arrivé à la conclusion, après avoir donné

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aux questions qui se soulévent beaucoup d'étude et de considération, que Howard devrait réussir et que le jugement *a quo* devrait être renversé.

La position légale se résume à ceci, suivant moi:—

Un tiers peut acquérir la terre d'un colon qui la détient par billet de location émis avant le 1er juillet, 1909, pourvu que cette acquisition ne lui donne pas plus de trois cents âcres de terre.

Pour être invoquée contre une autre personne qui a également un titre de colon, cette vente devra être enregistrée au bureau d'enregistrement du comté, en vertu du principe que de deux acquéreurs du même immeuble du même vendeur celui dont titre est enregistré le premier a droit d'en réclamer la propriété.

Cette vente, pour être valable, n'a pas besoin d'être enregistrée au bureau des Terres de la Couronne.

La Cour Supérieure et la Cour d'Appel ont décidé, en la présente cause, que la compagnie "Austin Lumber" n'a jamais été propriétaire du lot en question, et que les lettres patentes donnaient à Thibault un titre parfait qui l'autorisait de disposer de la propriété en favour de qui il voudrait.

On a allégué aussi en faveur de Thibault dans ces jugements la négligence de la compagnie de remplir ses obligations.

Ceci nous amème à considérer la nature du titre que possède de colon.

Je crois qu'à l'origine il était incertain si le billet de location qui était alors remis au colon pouvait être considéré comme une vente. Par ce billet de location le colon avait le droit d'aller s'installer sur une terre de la Couronne avec la permission de cette dernière: et, s'il y faisait certains défrichements, y construisait certaines bâtisses et faisait certains paiements, il

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pouvait, après un certain nombre d'années, devenir acquéreur de cette terre.

La Cour d'Appel, en 1887, a décidé dans la cause de *Gilmour* v. *Paradis* (1), que ce contrat constituait une promesse de vente.

Dans une cause de *Dinan* v. *Breakey,* décidée en 1881 (2), la Cour de Revision, à Québec, a déclaré que le billet de location était une vente conditionnelle.

Mais depuis 1904 il ne peut pas y avoir de difficulté quant à la nature du contrat. C'est une vente conditionelle. En effet, l'article 1269 des Statuts Refondus de Québec de 1888 a été amendé en 1904 par le chapitre 13 qui déclare que l'agent des terres est tenu de vendre au colon de bonne foi les terres propres à la culture et que

les ventes faites par les agents prennent leur effet du jour qu'elles sont faites.

L'article ajoute cependant que si le billet de location renferme quelque erreur cléricale, le ministère peut l'annuler pour qu'il soit émis un nouveau billet corrigé "qui a son effet de la date du premier."

Nous sommes donc dans le cas actuel en présence d'une vente qui est susceptible d'être résiliée par le vendeur si l'acheteur ne remplit pas les conditions stipulées dans le contrat.

Mais du jour où le billet de location a été émis le colon est devenu le propriétaire de son lot à toutes fins que de droit, à l'exception de certaines restrictions édictées par la loi statutaire et le colon peut se prévaloir de tous les privilèges que l'acheteur possède en vertu du Code Civil. Plus tard, quand il aura rempli ses conditions de paiement et d'établissement,

(1) M.L.R. 3 Q.B. 449. (2) 7 Q.L.R. 120.

il pourra avoir des lettres patentes, qui ne constitueront pas pour lui une nouvelle acquisition de la propriété, mais la confirmation, cette fois sans condition, de son droit de propriété dans le lot vendu.

C'est ce que Cour d'Appel a décidé dans la cause de *Handley* v. *Foran*(1), où le juge Hall, parlant au nom de la cour, disait:—

It has often been held that a location-ticket or promise of sale, with possession, was equivalent to a title, and the subsequent delivery of letters patent in exchange for the location-ticket whose conditions had been complied with, did not establish the date of the creation of a new right, but *only the recognition of a pre-existing one.*

Dans une cause de *Leblanc* v. *Robitaille*(2), jugée par cette Cour en 1901, il a été décidé que sous l'article 1269 tel qu'en force alors le billet de location n'avait aucun effet tant que le ministre ne l'avait pas approuvé.

Mais trois ans plus tard cet article 1269 était rappelé et cette approbation du ministre disparaissait pour faire place à la déclaration que "les ventes faites par les agents prennent leur effet du jour qu'elles sont faites"; et l'intervention du ministre n'était nécessaire que dans le cas où il y auriat en erreur cléricale dans le billet de location. Dans ce cas, le ministre était tenu de corriger cette erreur.

Il y a aussi une autre cause décidé par cette Cour, *Green* v. *Blackburn*(3), où les droits du colon quant aux mines ont été examinés. Mais là encore il s'agissait d'un billet de location émis en 1901, avant la loi de 1904, par conséquent.

Mais on dit: La compagnie Austin n'ayant pas rempli ses conditions d'achat, Thibault pouvait les

(1) Q.R. 5 Q.B. 44.
(2) 31 Can. S.C.R. 582.
(3) 40 Can. S.C.R. 647.

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exécuter lui-même et devenir propriétaire absolu de son lot.

La réponse à cette prétention est bien facile. Elle se trouve dans l'article 1536 du Code Civil qui dit que le vendeur d'un immeuble ne peut demander la résolution de la vente faite par l'acheteur d'en payer le prix, à moins d'une stipulation spéciale à cet effet. Or, nous ne trouvons pas de telle stipulation dans l'acte de 11 août, 1909; et, par conséquent, Thibault ne pouvait pas *proprio motû* résilier cette vente qu'il avait faite à la compagnie Austin et assumer le rôle de propriétaire absolu.

En Cour d'Appel, l'honorable juge-en-chef a déclare que le vente à la compagnie Austin était nulle parce que cette dernière détenait alors plus de 300 acres de terre de la Couronne.

Il est bien vrai que la loi à cette époque, 1275(*c*) tel qu'édicté par 4 Edw. VII., ch. 13, sec. 9, et amendé par 9 Edw. VII., ch. 24, sec. 3, déclarait que les transports faits en faveur d'une même personne pour plus de 300 acres non-patentés étaient nuls et ne conféraient aucun droit au cessionnaire pour le surplus des 300 acres. Mais je ne vois pas que la preuve de ce fait ait été faite.

J'ai analysé avec soin la preuve et je trouve qu'au 11 août, 1909, la compagnie Austin avait en sa possession le lot 30 du premier rang Arago; mais ce lot avait été patenté en 1899 et 1908; elle avait aussi les lots 26 et 27a du 3ème rang Arago; mais ces lots étaient patentés depuis 1892 et 1897. Elle avait aussi partie du lot No. 33 et le No. 32 du 6ème rang du Canton Patton; mais ces lots avaient été patentés en 1908 et 1909.

Mais on dit qu'elle avait des droits de coupe sur un grand nombre d'autres lots.

La preuve, en effet, constate que cette compagnie avait le droit de couper du bois sur plusieurs lots qui n'étaient pas encore patentés; mais ce droit ne donnait pas à la compagnie la propriété des lots eux-mêmes, et il ne peut pas être affecté par la prohibition de la loi.

Maintenant le défaut d'enregistrement du transport au bureau des Terres de la Couronne n'effecte pas sa validité. En 1904, la Législature de Québec avait déclaré que les transports qui ne seraient pas transmis au département seraient absolument nuls et de nul effet; mais cette législation fut abrogée en 1906, démontrant par là d'une manière évidente qu'en 1909 les transports non enregistrés au département étaient considérés comme valides entre les parties contractantes.

L'intimé a prétendu aussi que l'enregistrement de la vente de Thibault à la compagnie Austin au bureau d'enregistrement du comté est sans effet parce que le contrat d'acquisition de Thibault lui-même n'a pas été enregistré. Il se base sur la dernière partie de l'article 2098 du Code qui dit:—

> Jusqu'à ce que l'enregistrement du droit de l'acquéreur ait lieu, l'enregistrement de touts cession, tout transport, toute hypothèque ou tout droit réel par lui consenti affectant l'immeuble est sans effet.

Il faut lire cet article avec l'article 2084, qui déclare que les titres originaires de concession sont exempts des formalités de l'enregistrement. Par conséquent, les lettres patentes émises par la Couronne n'ont pas besoin d'être enregistrées.

Il en était probablement de même de la vente que l'agent des terres de la Couronne faisait sous les dis-

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positions de l'article 1269 S.R.P.Q. de 1888 tel qu'amendé en 1904.

En supposant que les dispositions formelles de l'article 2098 devraient prévaloir et qu'il faudrait enregistrer même les lettres patentes pour qu'un colon puisse faire la vente de sa propriété, l'intimé ne serait pas dans une meilleure position que le vendeur. Il ne pourrait pas lui aussi prétendre que son titre, quoiqu'enregistré, aurait plus de valeur que celui de la compagnie Austin. Car si l'enregistrement des lettres patentes est nécessaire pour la compagnie Austin, il est également nécessaire pour l'intimé Stewart.

Nous serions donc, suivant les prétentions de l'intimé, en présence de deux acheteurs dont les titres n'auraient pas été validement enregistrés. Alors dans ce cas-là celui qui devrait l'emporter serait le premier acquéreur. Le second acquéreur, en effet, déclare la première partie de l'article 2098, ne peut réclamer contre le premier acquereur que si son titre est enregistré.

Pour toutes ces raisons, je suis donc d'opinion que le jugement *a quo* doit être renversé avec dépens de cette Cour et des Cour inférieures.

Le demandeur appelant doit être déclaré propriétaire du lot No. 35 du 1er rang du Canton Arago et il doit être aussi déclaré propriétaire des 850 cordes de bois qui ont été saisies revendiquées.

Il a été prouvé que la défendeur intimé avait coupé ce bois et l'avait transporté à la rivière à ses frais et dépens. Il aurait, à raison de cela, augmenté la valeur du bois au montant de $3.25 la corde. Il a prouvé qu'il avait dépensé sur ces 850 cordes de bois la somme de $2,762.50. Il aura donc la droit de re-

tenir le bois, sous les dispositions de l'article 441 du Code Civil, jusqu'a ce que le remboursement de cette somme ait été effectuée.

Solicitors for the appellant: *Taschereau, Roy, Cannon, Parent & Fitzpatrick.*

Solicitor for the respondent: *Maurice Rousseau.*