to L. C. For (1) there was no recital or covenant for title in the deed to M. C.; (2) that deed did not purport to grant any estate in the land, but merely to assign or release and quit claim to the assignor's interest therein; (3) the deed never had any operation, for L. C. never paid anything for the land, never went into possession, never claimed to be owner of it, or paid the taxes, and from the first rêpudiated the gift.

McCarthy, Q.C., *MacTavish* and *MacCraken*, for the plaintiff.

Shepley and *F. M. McDougal*, for the defendant.

Boyd, C.] [June 10.

QUEEN v. ST. CATHARINES

Indian lands—Indian reserves—Title to Indian lands—Constitutional law.

In this action the Province of Ontario sought the intervention of this Court in order that the St. Catharines Milling and Lumber Company might be restrained from trespassing and cutting timber on lands claimed by the Province. The defendants justified under license obtained from the Government of Canada in April, 1883, by virtue of which they asserted the right to cut over timber limits on the south side of Wabegon Lake in that portion of Canada situated between Lake Superior and Eagle Lake. The defendants further pleaded specially that the place in question forms part of a district till recently claimed by tribes of Indians, who inhabited that part of the Dominion and that such claims have always been recognized by the various Governments of Canada and Ontario and by the Crown; that such Indian claims are paramount to the claim of the Province of Ontario, and that the Dominion have by purchase acquired the said Indian title, and that by reason thereof as well as by inherent right the Dominion and not the Province is alone entitled to deal with the said timber limits. It was admitted that the timber lands in question are within the territorial limits of Ontario, as determined by the Privy Council.

Held, that the Indian title to the land in question was extinguished by the Dominion treaty in 1873, known as North-West Angle Treaty No. 3, during the dispute with the Province as to the true western boundary of Ontario, and the extinction of title procured by and for the Dominion enured to the benefit of the Province as constitutional proprietor by title paramount, and it is not possible for the Dominion to preserve that title or transfer it in such wise as to oust the vested right of the Province to the land as part of the public domain of Ontario. It appears as a deduction from the legislation relating to the subject that the expressions "Indian Reserves," or "Lands reserved for Indians" had a well recognized conventional and perhaps technical meaning before and at the date of Confederation. "Lands reserved for Indians" is used in the British North America Act as a well-understood term, and that it was so is further demonstrated when one looks at the results of previous legislation in the various confederated Provinces other than Upper Canada. So also the legislation of Canada since Confederation reflects very clear light upon what was understood by those Indian Reserves. Before the appropriation of Reserves the Indians have no claim except upon the bounty and benevolence of the Crown. After the appropriation they become invested with a legally recognized tenure of defined lands in which they have a present right as to the exclusive and absolute usufruct, and a potential right of becoming individual owners in fee after enfranchisement. It is "lands reserved" in this sense for the Indians which form the subject of legislation in the British North America Act, *i.e.*, lands upon which or by means of the proceeds of which after being surrendered for sale, the tribes are to be trained for civilization under the auspices of the Dominion. It follows that lands ungranted upon which Indians are living at large in their primitive state within any Province form part of the public lands, and are held as before Confederation by that Province under various sections of the British North America Act. (See sec. 92, item 5; secs. 6, 109, and 117.) Such a class of public lands are appropriately alluded to in sec. 109 as lands belonging to the Province in which the Indians have an interest, *i.e.*, their possessory interest. When this interest is dealt with by being extinguished and by way of compensation in part reserves are allocated, then the juris-