

Street J.]

SMYLIE v. THE QUEEN.

[Nov. 24.

*Crown—Timber licenses—Renewal—New regulations—"Manufacturing condition"—61 Vict., c. 9—Application to past sales—Powers of Provincial Legislature—Sale of public lands—B.N.A. Act, s. 92 (5).*

By C.S.C. c. 23, s. 1 it was enacted that the Commissioner of Crown Lands might grant licenses to cut timber on the ungranted lands of the Crown, subject to such regulations as might from time to time be established by the Governor in Council; and, by sub-s. 2, no license shall be granted for a longer period than a year. Regulations established by order in council in 1869 provided, inter alia, that license holders who had complied with all existing regulations should be entitled to have their licenses renewed on application to the commissioner, and prescribed a form of license. The licenses issued to the suppliants in 1873 and 1888, and annually renewed up to 1898, contained a clause, (also found in the advertisement and conditions of sale) stating that the license was subject to the condition that the licensee should comply with all regulations "that are or may be established by order in council." By order in council of Dec. 17, 1897, .. was ordered that every license issued on or after the 30th April, 1898, should contain a condition that all pine cut under such license should be manufactured into sawn lumber in Canada. By 61 Vict., c. 9 it was enacted (s. 1) that all sales of pine timber which should be thereafter made, and all licenses thereafter granted, should be so made or granted subject to the condition set out in the regulations of Dec. 17, 1897, (s. 2) that such regulations were approved; (s. 3) that further regulations might be made; (s. 4) that s. 1 should come into force on the passing of the Act, and the other parts on April 29, 1898.

The suppliants applied to the commissioner for a renewal for the year 1898-9 of their licenses, without the insertion of the "manufacturing condition" above referred to, but this was refused. It was admitted that the suppliants had complied with all former conditions in the licenses previously issued to them.

*Held*, 1. That the suppliants were not entitled to renewals of their licenses free from conditions coming into force after the licenses originally issued to them.

2. Notwithstanding that s. 1 of 61 Vict., c. 9 was apparently applicable to future sales only, that Act, having regard to ss. 2 and 4, applied to renewals of licenses issued upon sales made before it was passed.

3. That that Act was intra vires of the Ontario Legislature, being an enactment in relation to "the management and sale of the public lands belonging to the province and of timber and wood thereon," within the meaning of s. 92 (5) of the British North America Act, and not to "the regulation of trade and commerce," within the meaning of s. 91 (2).

*C. Robinson, Q.C., and H. J. Scott, Q.C., for suppliants. S. H. Blake, Q.C., and Walter Gow for Crown.*