

the authority thereof, and all pine so cut into logs or otherwise shall be manufactured in Canada as aforesaid.

(2) Should any holder of a timber license or permit, or any servant or agent of such holder, or any person acting for him, or under his authority or permission, violate or refuse to keep and observe the condition mentioned in the preceding regulation, then and in such case the license or permit to cut pine timber on the berth, territory, lot or lots, included in the license or permit, and on which or any part of which there was a breach of such regulation or a refusal to observe or keep the same, shall be suspended and held in abeyance and shall not be re-issued, nor shall a new license issue unless and until so directed by the Lieutenant-Governor in Council and then only upon such terms and conditions as the Lieutenant-Governor in Council may impose.

(3.) The Commissioner of Crown Lands, his officers, servants and agents, may do all things necessary to prevent a breach of the aforesaid condition or regulation, and to secure compliance therewith, and may, for such purpose, take, seize, hold and detain all logs so cut as aforesaid, and which it is made to appear to the Commissioner of Crown Lands it is not the intention of the licensee, owner or holder, or person in possession of, to manufacture or cause to be manufactured as aforesaid in Canada, or to dispose of to others who will have the same so manufactured in Canada, until security shall be given to Her Majesty, satisfactory to the Commissioner, that the said condition will be kept and observed, and that such logs will be manufactured in Canada as aforesaid; and, in the event of refusal on the part of the licensee, owner or holder, or person in possession of such logs, to give such security within four weeks after notice of such seizure and demand of security by or on behalf of the Commissioner, then the Commissioner may sell or cause to be sold such logs by public auction after due advertisement to some person or persons who will give such security to Her Majesty as the Commissioner may require that such logs shall be manufactured in Canada. The proceeds of such logs shall, after such sale, and after deducting all expenses of such seizure and sale, and any sum due and owing to Her Majesty for or in respect of any timber dues, trespass dues, ground rent, or on account of the purchase of any timber or timber berths by the owner, licensee, or holder of a permit, or other person who has cut or caused to be cut such logs, or who is the owner or holder of the same, be paid over to the person entitled to the same.

(4.) Provided, nevertheless, that nothing in the preceding regulations which requires pine logs or timber to be manufactured in Canada, as aforesaid, shall apply to logs or timber cut and in use in Canada for any purpose for which logs or timber in the unmanufactured state are or may be used.

(5) Provided further, that these regulations shall not apply to the east half of the township of Awere, in the district of Algoma, containing 18½ square miles, nor to 22 square miles in the district of Thunder Bay composed of berths 2, 3 and 4 of the timber sale of 1890.

(6) The foregoing regulations shall not come into force unless and until they shall be approved by an Act of the legislature.

On 17th January, 1898, an Act was passed by the legislature of the province of Ontario in the following terms:

91 Vic. (Ont.) Cap. 9, passed 17th January, 1898. An Act respecting the manufacture of pine cut on the Crown Domain.

Her Majesty by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

(1) All sales of pine timber limits or berths by the Commissioner of Crown Lands which shall be hereafter made, and all licenses or permits to cut pine timber on such limits or berths thereafter granted by the Commissioner shall be so made or granted subject to the condition set out in the first regulation of Schedule A of this Act, and it shall be sufficient if such condition be cited or mentioned as "The Manufacturing Condition" in all notices, licenses, and permits or agreements or other writing.

(2) The regulations set out in Schedule A to this Act are hereby approved.

(3) The Lieutenant-Governor in Council may make any further or additional regulations necessary to enable the Commissioner of Crown Lands to carry into effect the object and intent of the regulations contained in Schedule A.

(4) Section 1 of this Act shall come into force on the passing hereof, and the other parts of this Act shall come into force on the 29th day of April, 1899.

SCHEDULE A.

(Schedule A reproduces the above regulations of 17th December, 1897.)

After the 29th April, 1898, the suppliants applied to the Commissioner of Crown Lands for a renewal for the year 1898-9 of the said licenses without the insertion of the provision in the regulations of 17th December, 1897, referred to in the above Statute as "The Manufacturing Condition," but the Commissioner refused to issue the license without this condition.

It is admitted that the suppliants had complied with all former conditions in the licenses previously issued to them.

Having obtained leave for the purpose they have now filed their petition of right praying for a declaration of their right to a renewal of their licenses without the manufacturing condition, and damages for the loss they have sustained by reason of the refusal of this right.

Their claim, at the argument, was placed upon the ground that they or their predecessors had purchased the right to the timber upon the limits from the Crown upon a contract for perpetual renewal of the yearly license, so long as they should comply with the regulations in force at the time they purchased, and that, in the absence of the clearest provisions to that effect in the writings forming their contract, it would be unreasonable to hold their rights to be subject to alteration from year to year, to their prejudice, by orders-in-council made without their consent.

In my opinion, not only the terms of the original licenses themselves, which, prima facie at all events, must be taken to show the rights of the licensees, but everything surrounding the transaction, before and since, is opposed to the contention of the suppliants.

In the first place, the statute under which the Commissioner of Crown Lands acts is as clear as words can make it; he is empowered to issue licenses, but only upon the terms prescribed from time to time by orders-in-council, and he is forbidden to grant any license for a longer period than a year.

The object of the act is plainly to prevent the government existing at any particular time from binding itself or future governments to abide by any particular regulations in their management of these immensely valuable portions of the public property, lest new circumstances should make it advisable in the public interest that changes should be made. The object of the legislature to permit merely temporary and not permanent regulations to be made being plainly and distinctly set forth in the Act, the language of the orders in council passed under it must be read by the light so furnished, and certainly should not be strained so as to convey an intention of departing from it. The intending purchaser is notified that his license will only be issued "subject to existing Crown timber regulations, and to such regulations as may hereafter be established by order in council, and also to all orders in council now existing or hereafter to be adopted affecting licensed territory. In accordance with this provision, the licenses when issued are made upon condition that the licensees shall comply not only with all regulations that are, but also with those that may be established by order in council. With the licenses are incorporated by reference the regulations of 1869, in force at the time, and it is upon the 5th regulation that the suppliants very largely found their claims. The terms of that regulation are that "license holders who shall have complied with all existing regulations shall be entitled to have their licenses renewed on application to the Commissioner of Crown Lands, &c." If this regulation stood alone, without the Act under which it was made, the conditions of sale at which the purchase was made, and the license, which is to be read with it, there would be the greatest force in the argument that the original licensee was entitled to a perpetual renewal of his license from year to year upon compliance with the regulations in force when it was granted. But the Commissioner of Crown Lands in granting the licenses, has imposed upon the licensees, as he was bound to do by the existing act and regulations, the condition that not only the regulations in force at the time the licenses were granted, but those to be established, should be complied with; and the right of renewal conferred by the 5th regulation of 1869 must be taken to be a right of renewal upon the conditions in force at the time of the renewal. In other words, persons desiring to obtain timber licenses are notified by statute, by conditions of sale, and by the form of license offered them, that they can only obtain them upon the understanding that the conditions upon which they

are granted may be altered from time to time at the discretion of the government, and that as their sole protection against wrong, they must rely upon what has been termed "the infallible justice of the Crown" by the late Vice-Chancellor Estlin in *Craig vs. Templeton*, 8 Gr. 483. Such a bargain is by no means remarkable or unknown even in cases where the Crown is not a party; see *Pepe v. City and Suburban Building Society* (1893), 2 Ch. 311, and the class of cases there referred to.

The sentences to which I was referred by counsel occurring in the report of the Commissioner of Crown Lands to the Provincial Legislature in the year 1872 do not appear to establish or assert any different interpretation of the rights of licensees. He asserts that they have vested rights to a renewal of their licenses, but it is plain that he contemplates only such a renewal as that which has always been conceded to them, viz., a renewal subject to the conditions and regulations in force at the time the renewal is granted.

Reference was properly directed upon the argument to the contemporaneous interpretation placed by the executive officers of the Crown upon the regulations affecting the rights of license holders, and the manner in which they have been dealt with from time to time by the Department as bearing upon the meaning which should now be placed upon them. It appears from the evidence of Mr. Aubrey White, the present Assistant Commissioner of Crown Lands, whose experience in the Department goes back many years, that the invariable practice has been to embody in every license, whether an original or a renewal, all changes effected by orders in council in force at its date. This practice is apparent in the renewals of the licenses under which the suppliants claim; they and their predecessors periodically accepted licenses which contained not only the conditions in force at the time of the original licenses, but all these additional ones subsequently adopted, and paid the additional ground rent and Crown dues on timber cut imposed by the regulations of April, 1887.

These considerations appear to me conclusive against the contention of the suppliants that they are entitled to renewals of their licenses free from any conditions, to which they object, coming into force after the original license under which they claim.

It is further argued, however, that, even if this be the true construction to be placed upon their rights, the language of the Act 61 Vic. Ch. 9, above set forth, applies only to licenses issued upon sales made after it was passed, and not to renewals of licenses issued upon sales made before it was passed. Had the first section of the Act stood alone, I think I should have agreed with this view, but the fourth section brings into force on 29th April, 1898, the order-in-council of 17th December, 1897, the first section of which requires what is called in the Act the "Manufacturing Condition" to be made a condition of every license or permit to cut pine timber which should be issued after 30th April, 1898. It is urged that the injustice of interfering with the vested rights of existing licensees obliges the Court to place the strictest possible construction against the Crown upon the Act and the order-in-council as being *ex post facto* legislation. I do not think, however, that I should, in regard to this legislation, do more than apply to it the ordinary rules of construction. It is not *ex post facto* legislation; it is a simple application to the undoubted rights of the suppliants of the undoubted rights of the Crown. The rights of the suppliants are to have their licenses renewed according to the conditions which at the time of renewal have been generally imposed upon license holders, and so long as renewals are offered them upon conditions which the Crown, as represented by the Provincial Governor in Council, has the power to impose, no breach of the rights of the suppliants is committed. It is no part of my duty to adjudicate upon the question as to whether the conditions of the order-in-council of December, 1897, are unduly onerous, or to criticize the discretion exercised by the Crown in imposing them. I find here in the order-in-council of 17th December, 1897, a plain and unambiguous direction that every license or permit to cut timber issued on or after 30th April, 1898, shall contain and be subject to what is called in the Act the "Manufacturing Condition," and if this language is not plain enough, I find in the fifth paragraph of the order-in-council internal evidence that it was intended to be applicable to past as well as future sales. To construe it as the suppliants ask, I should have to apply to the word "license," in the first paragraph, the meaning of "original license," and to treat it as not in-