

NOVEMBER 22ND, 1909.

TAIT v. SNETZINGER.

Estoppel—Res Judicata—Trespass—Title to Land—Judgment in Former Action as to Part of Land in Question—Identity of Issues.

Appeal by the defendant from the judgment of FALCONBRIDGE, C.J.K.B., who tried the action without a jury, in favour of the plaintiff.

The action was in trespass respecting the westerly part of Sheik's island, to which both the plaintiff and defendant claimed title. The whole island is an Indian reservation, and in 1796 was leased by the Indians for 999 years to Sheik and French; French subsequently released his interest to Sheik. Sheik laid out the island in lots numbering from the east 1 to 7. The land in question lay to the west of 7, and was apparently either intended to form part of 7 or had no specific number of its own. The plaintiff claimed the land to the west of 7; his title was derived through a sale by the sheriff to one Chesley of the interest of the heir-at-law of Sheik and a deed of confirmation to Chesley by the Indians. The defendant claimed title under one Sheets, to whom, he alleged, Sheik in his lifetime sold lot 7, which lot, he asserted, included the land in dispute. Sheets and those claiming under him were for many years in possession of lot 7 exclusive of the land in dispute; the plaintiff asserted that the land in dispute never was a part of that lot.

It having been deemed by the Crown necessary to acquire 15 acres of the westerly end of the island, forming part of the land in dispute, for the purpose of enlarging a canal, proceedings were in 1894 instituted by the Crown by information in the Exchequer Court of Canada against William J. Sheets, Peter Nathaniel Tait (the plaintiff), Adam Dixon Wagner, executor of George G. Dixon, John G. Snetzinger (the defendant), and the Superintendent of Indian Affairs, as defendants. The information set out the taking of the lands for the use of Her Majesty; that the defendants claimed to have an estate in fee simple in the lands or such an estate as the defendants could acquire by assignment of lease from the Indians; that Her Majesty was ready and willing to pay to the defendants or others entitled \$1,400, subject to any claim of lien made good by the Superintendent-General of Indian Affairs, in full satisfaction and discharge of all claims by the defendants or others by reason of the expropriation. To this information