

tarily, were not opposed by the Government, and have since been patented to the parties themselves or those claiming under them, whereas, without the recognition of the Government, these leases were worthless, constituting no title whatever; and yet the Government itself, when I was Attorney-General, confiscated large tracts of land held under Brant Leases being in the hands of aliens who forfeited their estates by treason during the American War of 1812.

Now the lease of Point-au-Pelée island stands just in the same position, and I have no doubt that, if the McCormicks, instead of being loyal subjects to the Crown, had left the Province and gone to the United States during the war, this Island would have been forfeited in the same manner. Thomas McKee, to my knowledge, was a man of influence as a chief and officer of the Indian Department, and was as much entitled to the affectionate regard of the Indians, to whom the Island belonged, as Brant, or any other leading chief of the Six Nations, was to theirs; and I am sure that if, at that time, the Government (who never owned the Island) had attempted to deprive him of it, while the whole matter was fresh in the minds of all the Indians and inhabitants of that part of the country, it would have created great disgust in the mind of every one—Indian and white settler—and the Indians who assented to the lease, would, in all probability, have resented, in some way, the indignity offered them by the refusal to recognize their act.

The Government, at all events, never had any right to the Island, as it was never ceded to the Crown by the Indians, and it having been in the possession of the lessee and his assigns, claiming title to it, for more than seventy years; I am sure that so unjustifiable an act, as the depriving a loyal family of their patrimony, under the pretence that they have established no *legal paper title to it*, after living upon and improving it for between 70 and 80 years, has not yet been attempted by any Government dealing with the Indians at any time.

If the Crown rests its claim upon the prerogative right of seizing into its own hands all property for which no owner can be found—as, if an illegitimate son had died without issue and intestate, then, in default of heirs, the Crown would take as *parens patriæ*—I do not think any defence could be set up. In the present case, however, it is clear that, if the defendants had been properly defended, the Crown would have been defeated under the provisions of the 9th George III, cap. 16, made expressly to quiet the possession of the subject: where neither the King, nor those under whom he made title, had either been in possession, or taken the profits, for 60 years.

In this case the Crown could have made out no such case, as this Island had never been ceded to it, and no others, than the McCormicks, had any rightful possession under which the Government could establish a claim.

I therefore think that the Government ought, at once, to consent to the setting aside the judgment, which, through negligence or ignorance, has been suffered to be obtained against the two defendants—although they might as well issue patents to those entitled under the Will of the late William McCormick.

I have read the judgment of the late Chief Justice of Upper Canada, Sir John Beverley Robinson, as reported in 18 U. C. Q. B. Reports, p. 131,—*Regina v. McCormicks*,—in which he evidently intimates that it was in consequence of the real facts of the case not being before the court that he was constrained to give judgment for the Crown, as he was well aware of the long enjoyment of the property under the Indian Lease.

Holland House, Toronto, 5th August, 1865.

#### APPENDIX (P.)

*Extract from a Letter addressed by Major-General Brock to Colonel Proctor.*

“Fort George, September 17, 1812.

“Colonel E.—[Elliot] is a respectable, gentlemanly man; but he, by no means, possess the influence over the Indians which Captain McK.—[Thomas McKee] does; I recommend to you to promote, as far as in you lies, a good understanding with, and between them, and observe a conciliating deportment and language towards the latter that his great influence may be secured and employed, in its fullest extent, for the benefit of your district and for the general good. In conversation with him you may take an opportunity of intimating that I have not been unmindful of the interests of the Indians in my communications to ministers, and I wish you to learn (as if casually the subject of conversation) what stipulations they would propose for themselves, or be willing to accede to, in case either of failure or of success.”

Life and correspondence of Major-General Sir Isaac Brock, K.B., by Ferdinand O. Tupper, Esquire, 2nd Ed., p. 311.