

CAN.
EX. C.
—
BRITISH
AMERICAN
FISH CO.
v.
THE KING.
—
Cassels, J.

Para. 9 is as follows:—

9. If the answer to the foregoing question be in the affirmative, judgment is to be entered for the suppliant for \$15,000 by way of damages with costs, and any rights and privileges or obligations conferred or imposed upon the suppliant by the said document shall thereupon cease and determine, and the judgment shall so declare; if in the negative, the petition of right is to be dismissed with costs.

On October 1, 1913, 9 years after the execution of the lease in question, during which period the lessee had been in occupation under the terms of the lease and had complied with all the terms thereof, the following letter, dated Ottawa, October 1, 1913, was written by A. Johnston, the Deputy Minister of Marine and Fisheries:—

Re Lease of Fishing Privileges for Nelson and other Rivers and Great Slave Lake and a portion of Hudson Bay.

The above lease being one granted of fishing privileges in the Nelson and other rivers, and also the Great Slave Lake and a portion of Hudson Bay, to you, bearing date of April 19, 1904, and issued pursuant to an order-in-council of April 11, 1904, was *ultra vires* of the Governor-General-in-Council to authorise as not being in virtue of any statute of the Parliament of Canada, and as being repugnant to the common law. The lease was *ab initio* void, and has never been of any force or effect, and I have been directed to so inform you by the minister.

Para. 4 of the special case, in part, reads as follows:—

It is agreed between the parties for the purpose of this special case that the right of the Minister of Marine and Fisheries to issue or authorise to be issued, fishery leases and licenses for fisheries and fishing covering the territory described in the said document is to be assumed.

On the opening of the case I pointed out to Mr. Robinson, counsel for the Crown, that it was open to serious question whether this admission does not in fact admit the validity of the lease. It was not so intended between the parties. It was intended to admit that the minister has generally the power to issue leases and licenses over this territory, but that it does not follow that he had the power to issue this particular one.

There is no difference of opinion as to what was in contemplation between the parties. I suggested that it had better be made plain.

Mr. Robinson, acting for the Crown, argued the case with ability. His submissions are two in number: 1, that the renewal clause in this lease is *ultra vires* as extending beyond the powers conferred on the minister by the order-in-council. 2, that the renewal clause in the lease is not severable from the rest of the