

March 20, 1893.

*MAGEE et al. v. THE QUEEN.*

*Rideau Canal*—7 Vict. (Prov. Can.) c. 11, 9 Vict. (Prov. Can.) c. 42 — Conditional gift — Expropriation — Acquiescence — Forfeiture for breach of condition subsequent—Remedy against the Crown for unauthorized use of land—Abandonment by Crown—Reverter—Solicitor and client—Privileged communication—Evidence.

The Act 9 Vic., c. 42, was passed with the object of removing doubts as to the application of section 29 of the Act 7 Vic. c. 11, to certain lands set out and expropriated from one *S.* at Bytown. By the first section of the first mentioned Act it was enacted that the proviso contained in the 29th section of the Ordinance Vesting Act should be construed to apply to all the lands at Bytown set out and taken from *S.* under the provisions of the *Rideau Canal Act*, except “(1) so much thereof as was actually occupied “as the site of the Rideau Canal, as originally excavated at the “Sapper’s Bridge, and of the basin and bywash, as they stood at “the passing of the Ordinance Vesting Act, and excepting also, “(2) a tract of two hundred feet in breadth on each side of the “said canal,—the portion of the said land so excepted having “been freely granted by the said Nicholas Sparks to the late “Colonel By, of the Royal Engineers, for the purposes of the “canal,—and excepting also, (3) a tract of sixty feet round the “said basin and bywash - - - which was then “freely granted by the said Nicholas Sparks to the Principal “Officers of Ordnance for the purposes of the said canal, provided that no buildings should be erected thereon.”

The site of the canal, and the two hundred feet which were included within the limits of the land so set out and ascertained, had been given by an instrument, dated 17th November, 1826, under the hand of *S.* and one *B.* who was acting for the Crown, by which it was agreed that such portion of the land so freely given as might not be required for His Majesty’s service, should be restored to *S.* when the canal was completed. The canal was completed in 1832. Subsequent to the passing of the Act 9 Vic., c. 42, all the lands of *S.* so set out and ascertained were given up to him, except the portions above described, and deeds in the terms of the Act were exchanged between *S.* and the Principal Officers of Ordnance, in regard to the land so given up and so retained respectively.