

a declaration that the document mentioned in para. 2 of the special case is a good, valid and subsisting lease.

It appears that on April 11, 1904, an order-in-council was passed recommending the granting of the lease in question for a period of 21 years, of fishery privileges in the waters described in the order-in-council. In apparent pursuance of this order-in-council, the lease which is set out in full in the special case was executed on April 19, 1904.

The lease provides as follows:—

To have and to hold unto the said lessee, subject as aforesaid, for and during the term of 21 years, to be computed from May 1, 1904, and thenceforth next ensuing and fully to be complete and ended, yielding and paying therefor to His Majesty or his successors yearly and every year during the said term the certain rent and sum of ten dollars to be paid annually and in advance.

The lease then contains a provision which, it is argued, is contrary to the provisions of the order-in-council. It provides as follows:—

Should the said lessee conform to all the terms and conditions of the present lease, and should establish at the termination of the said period of 21 years that he, or the company hereinafter mentioned, has expended in exploring, developing, equipment and improvement of the said territory hereby leased, the sum of at least \$100,000, then he or the said company shall have the option of renewing the present lease, subject to the same terms and conditions, for a further period of 21 years.

It is agreed between the parties that the suppliant has complied with all the provisions of the lease, and that the rents payable by the terms of the said document were duly paid, and that if and so far as the said document was ever valid and binding upon the respondent, it has not ceased to be binding or become subject to invalidation by reason of the non-fulfilment or breach by the suppliant of any of the covenants, provisions, terms or conditions therein mentioned.

The 7th clause of the special case reads as follows:—

The suppliant has been, and now is, willing to accept the rights and premises in the said document mentioned for any part of the period or periods therein mentioned in respect of which the said document may be held to be binding upon the respondent, and, nevertheless, to pay the whole rent and to comply with and fulfil all the covenants, provisions, terms or conditions contained in the said document, and to fulfil all obligations thereby imposed upon the suppliant.

Para. 8 of the special case reads as follows:—

8. The question for the opinion of the court is: Is the said document dated April 19, 1904, binding upon the respondent in respect of the period or periods therein mentioned, or any part thereof?

CAN.

EX. C.

BRITISH
AMERICAN
FISH CO.

v.
THE KING.

Camels, J.