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DEPARTMENT OF INDIAN AFFAIRS
CANADA

DEPT. OF INDIAN AFFAIRS

JAN 7 1924

SURVEYS

Ottawa, 5th January, 1924.

Memo.

Mr. Robertson,

On the 3rd day of October, 1913, John Newson and his wife, Elizabeth A. Newson, conveyed to His Majesty King George V, as represented by the Superintendent General of Indian Affairs, the fee simple of certain lands described in the conveyance in which there is the following paragraph purporting to be a covenant on the part of the Crown:-

"And it is hereby further agreed covenanted and provided and the said The Superintendent General of Indian Affairs doth hereby for himself and his successors in office covenant promise and agree on behalf of His Majesty King George the Fifth his successors and assigns that the said The Superintendent General of Indian Affairs will at all times hereafter erect keep and maintain a good and sufficient fence made of closely crossed wire and posts of a height of six feet along the whole of the southern and western boundaries of the tract of land hereinbefore described."

The deed was not executed by His Majesty or by the Superintendent General of Indian Affairs, either on behalf of himself or on behalf of His Majesty.

The question submitted is whether or not the Crown is bound to erect, keep and maintain the fence mentioned in the above quoted paragraph of the deed.

The law as stated in Coke upon Littleton, and in the cases decided a good many years ago is that a party who takes the benefit of a deed is bound by it although he does not execute it. In modern times, this view of the law has been departed from and, as the law stands today, a covenant inserted in a deed requiring the grantee to do or refrain from doing certain acts mentioned in the covenant does not bind the grantee unless he executes the deed.

Indian Affairs. (RG 10, Volume 7760, File 27057-5)

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