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in the High Court of Justice of Ontario and their claim was to have the Letters Patent of Ontario under which the Respondents claimed declared void and set aside and cancelled and for consequential relief. One of the Respondents on the other hand counterclaimed for similar relief respecting the Letters Patent of the Dominion under which the Appellants claimed title.

The lands in question are comprised in the territory within the Province of Ontario which was surrendered by the Indians by the Treaty of 3rd October 1873 known as the North-West Angle Treaty. It was decided by this Board in the St. Catharines' Milling Company's case (14 A.C. 46) that prior to that surrender the Province of Ontario had a proprietary interest in the land under the provisions of Section 109 of the British North America Act 1867 subject to the burden of the Indian usufructuary title and upon the extinguishment of that title by the surrender the Province acquired the full beneficial interest in the land subject only to such qualified privilege of hunting and fishing as was reserved to the Indians in the treaty. In delivering the judgment of the Board Lord Watson observed that in construing the enactments of the British North America Act 1867 "it must always be kept in view that wherever public land with its incidents is described as 'the property of' or as 'belonging to' the Dominion or a Province these expressions merely import that the right to its beneficial use or its proceeds has been appropriated to the Dominion or the Province as the case may be and is subject to the control of its legislature the land itself being vested in the Crown." Their Lordships think that it should be added that the right of disposing of the land can only be exercised by the Crown under the advice of the Ministers of the Dominion or Province as the case may be to which the beneficial use of the land or its proceeds has been appropriated and by an instrument under the seal of the Dominion or the Province.

After the making of the treaty of 1873 the Dominion Government in intended pursuance of its terms purported to set out and appropriate portions of the lands surrendered as reserves for the use of the Indians and among such reserves was one known as Reserve 38 B of which the lands now in question form a part. The Rat Portage band of the Salteaux tribe of Indians resided on this reserve.

On the 8th October 1886 the Rat Portage band surrendered a portion of Reserve 38 B comprising the land in question to the Crown in trust to sell the same and invest the proceeds and pay the interest from such investment to the Indians and their descendants for ever. This surrender was made in accordance with the provisions of a Dominion Act known as the Indian Act 1880. But it was not suggested that this Act purports either expressly or by implication to authorise the Dominion Government to dispose of the public lands of Ontario without the consent of the Provincial Government. No question as to its being within the legislative jurisdiction of the Dominion therefore arises.

The action was tried before the Chancellor of Ontario and by his Judgment of the 2nd December 1899 it was dismissed with costs. By a second Judgment of 22nd December 1899 on the counterclaim it was declared that the several patents under the Great Seal of Canada under which the Appellants claimed were ultra vires of the Dominion and null and void as against the Respondents. On appeal to the Divisional Court these judgments were affirmed.

The reasons of the learned Chancellor for his decision are thus summarised in his judgment.

"Over the Reserve 38 B, the Dominion had and might exercise legislative and administrative jurisdiction, while the territorial and proprietary ownership of the soil was vested in the Crown for the benefit of and subject to the legislative control of the Province of Ontario. The treaty land was, in this case, set apart out of the surrendered territory by the Dominion, that is to say, the Indian title being extinguished for the benefit of the Province, the Dominion assumed to take of the Provincial land to establish a treaty reserve for the Indians. Granted that this might be done, yet when the subsequent surrender of part of this Treaty Reserve was made in 1886, the effect was again to free the part in litigation from the special treaty privileges of the Band, and to leave the sole proprietary and present ownership in the Crown as representing the Province of Ontario. That is the situation so far as the title to the land is concerned."

The learned Judge expressed his opinion that it was not proved that the Provincial Government had concurred in the choice or appropriation of the Re-