EDWARD H. MAUNSELL ET AL.....SUPPLIANTS;

AND

HIS MAJESTY THE KING.....RESPONDENT.

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Mar. 18.

Crown—Contract—Lease—Grazing lands—Breach of contract—Constructive eviction—Interpretation of contract.

M. Bros. were in possession of certain grazing lands in Alberta under the usual grazing lease obtained from the Crown.

Held: that the act of the Crown in dispossessing and evicting the lessees from the leased premises, contrary to law and to the terms of the contract of lease, is such a breach of contract for which a petition of right will lie to recover the damages resulting therefrom.

2. That, where upon receiving notice from the Crown that their leases had been cancelled or were to be cancelled, but which notices were admittedly void because of informalities, the lessees vacate the premises, it cannot be said that they have voluntarily abandoned the same, especially, as in this case, where said cancellation was ultimately approved of by Order in Council and acted upon by the Crown.

3. That whether there has been constructive eviction is always a question to be decided upon the facts in each case, and if the acts of the lessor indicate a clear intention on his part to dispossess the tenant and terminate the lease, such acts constitute constructive eviction.

4. That the following clause in the lease "that no implied covenant or liability of any kind on His Majesty's part is created by the use of the words 'demise and lease' herein, or by the use of any other word or words herein" refers only to title, and was not intended to exclude, and does not exclude, liability for wrongful entry or eviction by the lessor, nor does it destroy an implied covenant against wrongful entry or eviction by him.

ACTION by suppliants to recover damages due to a breach of contract by respondent.

Ottawa, February 16th and 17th, 1925.

Action now heard before the Honourable Mr. Justice Maclean, President of the Court.

R. B. Bennett, K.C., and *J. D. Matheson* for suppliants.

E. J. Daly for respondent.

The facts are stated in the reasons for judgment.

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MACLEAN J., now, this 18th day of March, 1925, delivered judgment.

It is desirable I think that I should as fully and clearly as possible set forth the principal facts involved in this action. In 1905, Edward H. Maunsell, of MacLeod, Alberta, one of the suppliants, entered into partnership with one John Cowdry, for the purpose of conducting a cattle ranching industry in that province, and a very considerable sum of money was invested by the partnership in the undertaking. In March, 1906, the partnership purchased from The Galway Horse and Cattle Company Limited, a grazing lease containing 60,381 acres, granted by the respondent as lessor in the same month and year, and known as Ranche 2422, and running for the period of twenty-one years from August 1, 1905. This lease was of a class usually known as a "closed lease," because it was not subject to cancellation during its currency by the respondent. In 1906, the respondent granted to Cowdry and others, five other grazing leases, altogether containing 125,978 acres, and which leases were acquired by the partnership. These leases were also for the period of twenty-one years, and were known as "open leases," as distinguished from the "closed lease" to which I have referred, in that they were subject to cancellation by the respondent, at any time upon two years notice.

The cancellation clause contained in the open leases was in the following terms:—

> Should the Governor in Council at any time during the term of the lease think it to be in the public interest to withdraw the lands herein described, or any portion thereof, or to cancel the lease for any reason, the Minister of the Interior may on giving the lessee two years notice withdraw such lands or cancel the lease.

This clause is numbered nine, in the printed form of lease then used by the respondent in such cases, but this clause was struck from the closed lease. These leases were issued under the provisions of the Dominion Lands Act, Chap. 54, sec. 50, R.S.C. 1886, which provided that leases of unoccupied Dominion Lands might be granted by the Minister for grazing purposes, to any person, for such term of years, and for such rent as was deemed expedient, and also provided that every lease should contain the condition that the Governor in Council might authorize the Minister at

any time to give the lessee notice of cancellation, and that the lease should cease and be determined at the end of two years from the service of such notice.

The grazing leases contained a number of other provisions, and I should perhaps mention the most important of them. From the leased lands the respondent reserved the right to withdraw from the operation of the lease, lands within the leased area, known and designated under the provisions of the Dominion Lands Act as lands of the Hudson Bay Company, lands which under the same Act had been set apart as an endowment for purposes of education, lands which may have been settled upon and occupied by persons, and who could not be disturbed without the consent of the Minister, lands which might be required for certain purposes under the provisions of the North West Irrigation Act 1898; lands required for railway purposes, and lands required in the future for the use of the Mounted Police Force, all of which were liable to be withdrawn by the respondent from the operation of the lease. In such cases, however, the lessee was entitled to a reduction or abatement of the rent, but was not entitled to any other compensation, for or on account of such withdrawals. The lessee was obliged to place upon the demised lands one head of cattle for every twenty acres of land, and during the whole term of the lease was obliged to maintain live cattle on the premises, in that proportion. The lessee was required in each of the first three years of the term of the lease, to place upon the lands not less than one-third of the whole number of cattle, which the terms of the lease required to be placed thereon. That is to say, the lessee within three years was obliged to place upon the leased lands one head of cattle for every twenty acres of land covered by the lease. The lessee was also required to furnish a return to the Department of the Interior on the first day of July each year, showing the number of head of cattle on the leaseholds. In the event of failure on the part of the lessee to have the requisite number of cattle placed on the premises, the lessee was liable on receiving three months notice, to have withdrawn from his leasehold, an area of twenty acres for each head of cattle less than the number required by the regulations or the lease.

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In November, 1906, the suppliant E. H. Maunsell, and his brother H. F. Maunsell the other suppliant, acquired by purchase the entire interest of Cowdry in these particular grazing leases, and generally the partnership property and assets, the consideration being the sum of $177,200, the purchasers assuming the liabilities of the partnership. The suppliants thereafter carried on business under the name of Maunsell Bros. Cowdry, however, in the meanwhile, retained the title to the grazing leases here in issue, as security for the payment of the consideration. Later the consideration was fully paid, and the leases were assigned to, and registered in the name of the suppliants. At the time of the purchase of the Cowdry interests in the former partnership, there were about 8,000 head of cattle on the property, and a number of young calves. The suppliants plead, it might here be said, that by the year 1909, when the notices of cancellation of the grazing leases were issued, and to which I shall later refer, they had substantially increased their stock of cattle and had expended large sums of money in planning the composition of the herds, providing for breeding purposes, erecting fences, dipping vats, and buildings.

On June 24, 1909, the respondent notified the suppliants, and Cowdry in whose name the leases were apparently still registered, that all the leases in question had been cancelled. The notice of cancellation of Ranche No. 2,422, the closed lease, was signed by the Secretary of the Department of the Interior, and was in the following terms:—

> I beg to inform you that as the lands comprising Ranche No. 2,422 reserved for sale under the Irrigation Act, your lease of the Ranche in question has accordingly been cancelled. You will be further advised regarding the settlement of your account of this ranche in due course.

The notices of cancellation of the five open leases were expressed in the same terms. No Order in Council had up to this time been passed authorizing the notice of cancellation as required by the statute or as required by clause nine of the lease. The suppliants had complied with all the requirements of the lease and the regulations prescribed in the premises.

The suppliant E. H. Maunsell having heard in October, 1908, through the newspapers, that cancellation of these leases was contemplated by the respondent, interviewed the then Minister of the Interior at Ottawa, early in 1909,

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who informed him that a large quantity of land in Alberta had been sold, or agreed to be sold, by the Government of Canada to a syndicate who were promoting in that region an extensive irrigation project, that the Department of the Interior for reasons which need not now be mentioned, had found it impossible to deliver to the syndicate the quantity of lands it had agreed to do, and that in order to implement the department's undertaking in this regard, it was proposed to cancel the suppliants leases so as to make these lands available for delivery to the syndicate. This suppliant had a later interview with the Minister and then protested against such proposed action. On October 16, 1909, the suppliant's solicitor protested against the cancellation of the closed lease, and particularly called attention to the fact that the usual paragraph numbered nine, had been struck from this particular lease, and that it was therefore not subject to cancellation on two years notice, or otherwise. On November 8, 1909, the suppliant E. H. Maunsell addressed the Minister of the Interior, protesting against the cancellation of his grazing leases, and urged that if the Department's action was not reversed, it meant absolute bankruptcy to him, and was a practical confiscation by the Crown of his property rights. He complained that he had already suffered heavy losses by the uncertainty of tenure the Department's action had created, that he had been prevented from pursuing those plans for restocking the ranches, which was so necessary in a successful cattle ranching business, that as matters then stood he was without notice deprived of grazing areas for his large and valuable herd of cattle, that valuable assets had been wiped out, and as a consequence his banking credit had been cancelled. On November 8, the suppliants' solicitor, wrote the Secretary of the Department of the Interior, again protesting against the Department's action, and contending that it had acted entirely without right, and that the leases in question contained no provision or authority for such action as the Department had taken. The solicitor asserted that the cancellations could not be made under the provisions of the North West Irrigation Act of 1908, or by reason of the reservation contained in the leases, of such lands as might be required for any purpose under the provisions of that Act, contending that such right was limited

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to irrigation "works" as defined by the statute. On November 22, 1909, the Department of the Interior wrote the suppliant's solicitor, advising him that the notice of cancellation respecting Ranche No. 2422, the closed lease, had been withdrawn and the suppliants reinstated in that lease. This notice also contained the advice that the suppliants would be temporarily reinstated in the five open leases, but that those would terminate at the expiration of two years, from June 24, 1909, which was the date of the notices of cancellation to which I have already referred, and which meant that those leases were to be cancelled in about eighteen months from the late of the last notice, November 22, 1909, thus having a retroactive effect covering about five months.

It is quite clear from the evidence what was the purpose of the Department, in cancelling the leases of the suppliants. In 1906, under the provisions of the North West Irrigation Act 1898, and the Dominion Lands Act, the Robbins Irrigation Company entered into an agreement with the Department of the Interior for the purchase of 380,573 acres of land within a certain tract described in the agreement, for the purpose of irrigating the same. This agreement was approved of by the Governor in Council on June 25, 1906. Subsequently in September, 1908, the Southern Alberta Land Company, Ltd., the successors of the Robbins Irrigation Company, advised the Department that it had learned after surveys had been made of this area, that a considerable portion of the same was so situated as to elevation, as to be impossible of irrigation. The company was obliged for this reason to materially change their original plans of the irrigation project, and applied to have certain changes made in the lands to be acquired under the agreement. That is to say, they wished to relinquish such lands as were unsuitable for successful irrigation, and to receive in lieu thereof certain other lands located in other townships, which surveys would disclose to be suitable for successful irrigation, and which were so situated as to form a reasonably compact irrigation tract. By Order in Council passed on the 9th day of September, 1908, and amended on October 6, 1908, effect was given to this application, and the company was permitted to acquire other lands within certain tracts or areas, described in the said Orders in Coun-

cil, and within which was located the suppliants' leaseholds. The Southern Alberta Land Company, Limited, in 1909, commenced the construction of the irrigation system as required by the agreement, the canals of which in fact passed through two of the suppliants' open leases, and the suppliants open grazing leases were thereafter regarded by this company as lands earmarked for its purposes and uses. The construction of the irrigation works proceeded continuously until 1911 or 1912, when it would appear the same were completed.

On August 12, 1911, an Order in Council was finally passed, cancelling the open leases under the notice given on November 22, 1909, as and from the date of June 24, 1909. This Order in Council after referring to the cancellation clause number nine in the lease, reads as follows:—

> The Minister states that as the lands covered by the leases are within the tract which it was proposed to sell to the Southern Alberta Land Company for irrigation purposes, notices were forwarded to the lessee on the 24th of June, 1909, to the effect that leases would be cancelled at the end of two years from that date.

I refer to this, chiefly because it indicates clearly, that what was in the mind of the Department, and what was its fixed policy when the notices of June 24, 1909, were issued, and that was, to put itself in a position to sell and convey to the Southern Alberta Land Company, the lands contained within all of the suppliants' leases. The evidence makes it clear that this was the settled policy of the Department even in 1908, and before any of the notices of cancellation in question were given.

I should perhaps here say that negotiations were carried on between the suppliants, and the Department of the Interior, subsequent to the second cancellation notices, with a view apparently of composing the differences resulting from the cancellation of the leases. The suppliant E. H. Maunsell states that the respondent made different proposals of settlement of compensation, by way of granting leases of other grazing lands to the suppliants, the latter abandoning any claims they might have against the respondent for the cancellation of the leases. One proposal was to grant to the suppliants a closed lease, covering a tract of land in another locality for a period of sixteen years, and according to the evidence of E. H. Maunsell this proposal was accepted. The suppliants state that after

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considerable trouble and expense they located 40,000 acres south of the Red Deer River. In April, 1911, the respondent directed the usual inspection of such lands, and in July, 1911, instructed the suppliants to post the usual notices of application for the lease, for the period of thirty days, and to comply in every respect with the departmental regulations in such cases made and provided for. This arrangement or proposal was not carried out. E. H. Maunsell states that in the end the respondent issued the usual open lease for this selected area, that is to say a lease subject to cancellation upon two years notice, and not a closed lease for sixteen years as stipulated, which the suppliants did not regard as satisfactory and declined to accept. I have no hesitation whatever in accepting as correct the evidence of E. H. Maunsell upon this point, for whatever it be worth. In fact it is not contradicted.

The suppliants continued in possession of the closed lease after the reinstatement in 1909, until 1918, when they disposed of the same. They continued also in possession of the five open leases apparently until June, 1911, and paid the prescribed rentals for the same until their occupation terminated. The suppliants claim that the rentals were paid because they required the use of the lands while closing out their cattle business, and also because they felt obliged to do so until they had fully paid Cowdry, in whose name the leases, and I think other properties, were still registered.

It is perhaps convenient here to refer briefly to the legal effect of the several notices of cancellation, given by the respondent to the suppliants. I am relieved of a discussion of this point because the respondent pleads that they were all entirely unauthorized, ineffective and inoperative, and did not effect a cancellation of the leases. Again, counsel, for the respondent, took the position at the trial, that the notices cancelling the open leases were ineffective and invalid, because there was no declaration by the Governor in Council to the effect that it was in the public interest to withdraw the lands from the operation of the leases, or that they be cancelled, and that the notices were ineffective also for the reason that they did not give the two years notice required by paragraph nine of the leases, there being only about eighteen months notice. He also contended that

the Order in Council of August 12, 1911, approving of the cancellation of the leases was ineffective, because the notice of cancellation had not been preceded by the declaration of the Governor in Council as required by paragraph nine of the leases. As to the closed lease, counsel contended that there could only be cancellation by the respondent of this lease upon the ground of failure to comply with the terms and conditions of the lease, and that the notice of June 24, 1909, was ineffective, invalid and of no effect. He argued that the suppliants should have disregarded and resisted all of the cancellation notices, but instead, he urged, the suppliants voluntarily left the lands, and that there was a constructive abandonment of the lease. Clearly I think the cancellation notices of June 24, 1909, were all void, as also were the notices of November 22, 1909, in that the same were not first authorized by the Governor in Council as required by clause nine of the leases. Neither do I think that the respondent can be heard to say that the notices of cancellation were unauthorized, on the ground that they were issued by officials of the Department. The Orders in Council of 1908 brought the grazing leases of the suppliants within the irrigation scheme. Clause 19 of the leases themselves provided that any notice or demand which His Majesty or the Minister might require or desire to give or serve upon the lessee, might be validly given by the Secretary or Assistant Secretary of the Department of the Interior, and such provision was observed in this case. In any event the notices of cancellation of the open leases were ultimately approved of and acted upon by the Governor in Council.

Assuming the suppliants were dispossessed of, or evicted from the premises, and that there was no such abandonment by the suppliants as would afford a defence to the action, does a petition of right lie for damages resulting from a breach of the contract by the respondent. One of the leading authorities upon this point is the *Windsor and Annapolis Railway* v. *The Queen and the Western Counties Railway* (1), affirmined on appeal by the Privy Council (2), and in which the question as to the liability of the Crown on contract was distinctly raised and clearly and exhaustively discussed, and the principle there established

(1) [1883] 10 S.C.R. 335. (2) [1886] 11 App. Cases 607.

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has since been followed both in England and Canada, and is I think conclusive in this case. I need not discuss this case at any length. The facts were as follows:—

The Government of Canada by an agreement dated the 22nd day of September, 1871, undertook to give the Windsor and Annapolis Railway Company the exclusive use of the Windsor Branch Railway, and also running powers over the trunk line from Windsor Junction to Halifax for the term of twenty-one years. The company in pursuance of that agreement entered upon and worked the Windsor Branch Railway until the 1st of August, 1877, when the Government Superintendent of Railways took possession of the line and put an end to the occupation of the company, subsequently leasing it to another company.

One of the questions for the decision of the Privy Council was, whether the Crown was liable for this breach of contract; upon this point the Judicial Committee said as follows (p. 612):—

> Their Lordships are of opinion that it must now be regarded as settled law, that whenever a valid contract has been made between the Crown and a subject, a petition of right will lie for damages resulting from a breach of that contract by the Crown. Section 8 of the Canadian Petition of Right Act (39 Vict., c. 27, Dom. Parlt.), contemplates that damages may be recoverable from the Crown by means of such a petition; and the reasons assigned by Lord Blackburn for the decision of the Court of Queen's Bench in *Thomas* v. *The Queen* (1) appear to their Lordships necessarily to lead to the conclusion that damages arising from breach of contract are so recoverable. A suit for damages in respect of the violation of contract is as much an action upon the contract as a suit for performance; it is the only available means of enforcing the contract in cases where, through the act or omission of one of the contracting parties, specific performance has become impossible. In *Tobin* v. *The Queen* (2), Chief Justice Erle whilst affirming the doctrine that the Sovereign cannot be sued in a petition of right for a wrong done by the executive, took care to explain that "claims founded on contracts and grants made on behalf of the Crown are within a class legally distinct from wrongs."

Again:—

> Another argument submitted on behalf of the respondent was to the effect that the Crown is only liable in respect of breaches of contract occasioned by the omissions of Crown officials, and is not liable in respect of breaches due to their positive acts even when these acts are done under direct authority from the Crown. Upon this point it is sufficient to say that, in the opinion of their Lordships, there is neither authority nor principle for recognising any such distinction.

An important question therefore to decide is whether the suppliants were dispossessed of or evicted from the lease-

(1) [1874] L.R. 10 Q.B. 31.

(2) [1864] 16 C.B. (N.S.) 310, at p. 355.

holds and was there here a constructive eviction. The doctrine of constructive eviction grew out of that class of cases, in which the tenants' rights were as effectually determined, and his enjoyment of the estate granted as effectually prevented by other means, as through a judgment, or an actual putting out of possession. An eviction is either actual or constructive and in either case whether there has been an eviction, depends on the circumstances of the case. As a rule if the tenant is deprived without his consent of the beneficial use or enjoyment of the demised premises, by some intentional and permanent act of the landlord, that constitutes an eviction. The tenant must be dispossessed, or he must abandon the premises because of the landlord's acts, and for no other reason. It is necessary also in order to constitute a constructive eviction, that the landlord materially interfere with the beneficial enjoyment of the demised premises. There may be some acts of interference by a landlord with the tenants enjoyment of the premises which do not amount to an eviction, but which may be either merely acts of trespass, or eviction, according to the intention with which they are done. If these acts amount to a clear indication of intention on the landlord's part, that the tenant shall no longer continue to hold the premises, that would constitute an eviction. There would appear to be no reason why a tenant should lose the right to assert a constructive eviction by attempts to remedy the acts complained of, or by an attempted settlement of the controversy. The settled rule seems to be that in order to constitute constructive eviction, the acts of the landlord must indicate an intention on his part that the tenant shall no longer continue to hold and enjoy the demised premises. A man is presumed in law to intend the natural and probable consequences of his acts, and therefore the acts of the landlord calculated to make it necessary for the tenant to remove from the demised premises, constitutes a constructive eviction. *Upton* v. *Greenlees* (1); *Upton* v. *Townend* (2); Kent Commentaries 13th Edition, Vol. 3, note p. 464; *Hall* v. *Burgess* (3); *Burns* v. *Phelps* (4); *McLean* v. *The King* (5); Corpus Juris, Vol. 36, sec. 988, 989, 990; *Skally* v. *Shute* (6).

(1) [1855] 17 C.B.R. 51.
(2) [1855] 17 C.B.R. 30.
(3) [1826] 5 B. & C. 332.
(4) [1815] 1 Starkies Rep. 94.
(5) [1907] 38 S.C.R. 542.
(6) [1882] 132 Mass. 367.

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If this be a correct statement of the law as to what constitutes constructive eviction, do the acts of the respondent disclose an intention to dispossess and materially interfere with the beneficial enjoyment of the demised premises by the suppliants and without their consent, and such as to constitute a constructive eviction of the suppliants? I think they clearly do. I have already related the facts relevant to this phase of the case, but I might here summarize the evidence upon the point. In the first place, the evidence of E. H. Maunsell which is not disputed, indicates that even in 1908, the then Minister of the Interior advised that suppliant, that the leases were to be cancelled for the purpose of conveying the same to some persons or company, and the reasons for so doing were given. In June, 1909, notices of cancellation of the leases were issued, and the notices disclosed the fact that the cancellations had relation to some irrigation project, undoubtedly that contemplated by the Robbins Irrigation Company. By Order in Council dated September 9, 1908, and as amended by Order in Council dated October 6, 1908, the demised premises were placed within a designated area of land, from which the Southern Alberta Land Company, the successors of the Robbins Irrigation Company might select an acreage of lands equivalent to an acreage to be relinquished from the former area mentioned in the agreement of 1906, on account of their unsuitability for irrigation purposes. Notices of cancellation of the leases were given on June 24, 1908, and again for the open leases on November 22, 1909. The Order in Council of August 12, 1911, terminating the leases upon the notices of November 22, 1909, stated that the cancellations were made in order to sell the lands of the Southern Alberta Land Company. The respondent thus intended to revest the property in himself, before conveying the same to the Southern Alberta Land Company. In 1914, the Government of Canada made an advance of $354,684 to the receiver and manager of the Southern Alberta Land Company, and which advance according to the terms of an agreement, became a first charge upon all the lands agreed to be sold to the Southern Alberta Land Company, or its predecessors, including the lands contained within the five open grazing leases. The Southern Alberta Land Company had prior to this entered into possession of a portion

of the demised lands in question, and thereon constructed irrigation works for the purpose of later irrigating and selling the lands in question. Since 1911, the leaseholds in question, excepting the closed lease, have been in the undisputed possession and control of the Southern Alberta Land Company, or its successors the Canada Land Company. The respondent acted upon the notices of cancellation. These facts I think indisputably reveal the intention and policy of the respondent to terminate the leases of the suppliants, and amount to nothing less than an eviction, or re-entry by the respondent or its assigns, and it was thus clearly intended to deprive the suppliants permanently of the beneficial enjoyment of the premises. I entertain no doubt whatever in reaching the conclusion that there was here a constructive eviction. The chain of events I have mentioned were brought about with deliberation and for an avowed purpose, and can only mean that the suppliants were dispossessed of their leases, and intended so to be by the respondent, and this cannot in my opinion be changed into an abandonment of the leases by the suppliants.

By agreement, the only issue to be disposed of at the present time, is as to whether the respondent is in law liable to the suppliants for any damages suffered by them, by reason of the void cancellations of the leases. That the suppliants suffered damage is not I think subject to serious doubt. It was evidently public policy to encourage the breeding and grazing of cattle, upon lands leased for such purposes, and which were lands believed not to be desirable for homestead purposes, but yet quite suitable for grazing purposes, owing to the natural grasses there to be found. As I have already pointed out the lessee was bound by the terms of the lease to place and maintain upon the premises, cattle in numbers proportioned to the acreage, and to yearly maintain that proportion. It required a substantial amount of capital to carry on the cattle ranching business, and in this case the suppliants required a substantial banking credit annually. It is obvious that certainty of tenure of the grazing leases was the real basis of advances of banking credit, for without the grazing lands there could be no cattle business. When the suppliants received the first notice of cancellation they immediately found themselves restricted as to banking credit, according

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to the evidence of E. H. Maunsell. They felt obliged between June and November, 1909, to abandon the purchase of young steers, to maintain the required number of cattle upon the leaseholds, after making the customary annual sales of finished cattle. They also felt compelled to commence the gradual disposal of some of their stock of cattle, principally the cows and calves, immediately following the first notices of cancellation. It is to be remembered that the notices of June 24, 1909, peremptorily cancelled all the leases. Apparently the suppliants did not take legal advice in the matter up to this time, but even if advised by counsel that the cancellations were void, that would not necessarily convince their bankers that their credit should be continued, nor would it in all the circumstances necessarily justify the suppliants in resisting the cancellations. Their class of business was of such a character that any contest as to the title of the leaseholds, quickly reacted upon their credit, and compelled them to consider the policy of immediate though gradual liquidation. After the notices of November 22, 1909, the suppliants endeavoured to obtain a lease of other lands for a period of sixteen years, but this did not materialize as I have already stated. It was but natural therefore that the suppliants should proceed to liquidate their business, which they did, and they say at a loss. The loss of banking credit alone, due to the action of the respondent, they allege, did not permit of the liquidation being carried out except at a financial loss. The temporary cancellation of the closed lease, they allege also caused them to suffer damages. I think there can be no doubt that the suppliant suffered damage by the several cancellations, all of which the respondent admits were illegal and void. The suppliants at least were entitled to two years notice of the termination of the leases, as required by clause nine of the same, which they never received. It is my opinion that the respondent is liable in law for damages suffered by the suppliants, and also that in fact the suppliants did suffer damage.

As I have already stated, reservations were contained in the leases, by which lands might be withdrawn for various purposes from the leaseholds, and the respondent probably for this reason sought by clause 18 of the same, to exclude the implication of implied covenants as to title, being

created by the use of the word *demise* or words of the same import. Clause 18 reads as follows:—

That no implied covenant or liability of any kind on His Majesty's part is created by the use of the words "demise and lease" herein, or by the use of any other word or words herein.

A covenant for quiet enjoyment either expressed or implied, is essential where eviction by title paramount, that is by title paramount and adverse to the lessor, is the subject of a claim for damages, but here eviction by title paramount was hardly possible, or if possible was not deemed probable or imminent, and in fact did not occur. This clause has reference only to title and I think was not intended to exclude, and does not exclude liability for wrongful entry or eviction by the lessor, nor does it destroy an implied covenant against wrongful entry or eviction by the lessor. The provisions of the leases provided for the conditions under which re-entry might be made by reason of the failure of the lessees, to perform the terms and conditions thereof. In all other cases entry by the lessor would be illegal, except after a proper cancellation, and for which the lessor would be liable to the lessee in damages. If the lease as qualified by this section means anything else, the result would be that there would not in reality be a lease or contract at all. It might be ended by the lessor the moment it was made, a principle which finds no support in law or reason. The lease is a contract, the terms of which the respondent must observe and carry out, except for good cause.

There will be judgment for the suppliants for damages to be assessed, etc.

Judgment accordingly.