

IN THE MATTER of the Petition of Right of

THE ST. CATHARINES HYDRAU- } SUPPLIANTS;
LIC COMPANY, LIMITED..... }

1910
}
Jan'y. 10.

AND

HIS MAJESTY THE KING.....RESPONDENT.

*Landlord and Tenant—Lease by Crown of certain mill-races and water
privileges—Renewal—Compensation.*

- A lease, like any other document, has to be construed according to the language used within its four corners, having regard to the situation of the parties at the time of its execution and to settled rules of law.
2. The leaning of the courts is against construing a lease as one giving a perpetual right of renewal, unless the terms of the lease make it plain that such was the intention.
 3. In a lease of certain mill-races on the Welland Canal, together with certain water privileges, it was stipulated between the Crown and its lessees that the lease should be "renewable as hereinafter provided." The subsequent provision as to renewal was as follows:—
"And it is further agreed . . . that after the end of the term of twenty-one years as aforesaid, if the said commissioners . . . shall or do not continue the lease . . . to the said parties of the second part or their assigns, that they, the said commissioners . . . shall pay the said parties of the second part or their assigns, or any person or persons making erections under them with their consent, the full amount of their expenditure, or the value of the same, for the construction of any race or water-course, lands, mills, etc., the same to be determined by arbitrators . . ."

Held, that the meaning of the lease was that after the expiry of the term of the lease (twenty-one years) the lessors or their successors might have continued the lease, and if at any time they did not do so then the right of compensation enured to the lessees.

PETITION OF RIGHT for alleged breach of covenant in a lease.

The facts are set out in the reasons for judgment.

December 8th and 9th, 1909.

The case was heard at Toronto.

H. M. Mowat, K.C., for the suppliants ;

H. H. Dewart, K.C., for the Crown.

Mr. *Mowat* contended that the lease in question must either be treated as renewable in perpetuity, in which case the suppliants would be before the court as tenants under an existing lease; or else, if it was not a lease renewable except for one term, then it never was renewed, and never having been renewed the Crown is bound to pay for the improvements. The word "continue" must be given the effect of perpetuity so long as the Government had not exercised its option of taking over the property. (Cites *Furnival v. Crew* (1).

The covenant, if construed as being one for perpetual renewal, would not be bad in law. (Cites *Bell on Landlord and Tenant* (2). A covenant for renewal forever is not within the rule against perpetuities and will be enforced. *London and Southwestern Railway Co. v. Gomm* (3); *Cooke v. Booth* (4).

Mr. *Dewart*, on the point of compensation, argued that the suppliants would not be entitled to recover in respect of improvements more than their value at the end of the first term of twenty-one years. As to the construction of the covenant, he contended that the word "continue" should not be read as meaning more than a right of renewal for one term. He cited *Dawson v. Graham* (5); *Lewis v. Stephenson* (6); *Iggulden v. May* (7); *Hyde v. Skinner* (8); *Swinburne v. Milburn* (9); *Farley v. Sanson* (10); *Nudell v. Williams* (11); *Sears v. City of St. John* (12).

Mr. *Mowat*, in reply, relied on *Clinch v. Pernette* (13).

CASSELS, J., now (January 10th, 1910) delivered judgment.

(1) 3 Atk. 83.

(2) P. 440.

(3) L. R. 20 Ch. D. 562.

(4) 2 Cowp. 819.

(5) 41 U. C. Q. B. 532.

(6) 67 L. J. Q. B. 296.

(7) 9 Ves. 325.

(8) 2 P. Wms. 196.

(9) L. R. 9 A. C. 854.

(10) 5 O. L. R. 105.

(11) 15 U. C. C. P. 348.

(12) 18 S. C. R. 702.

(13) 24 S. C. R. 385.

1910
 THE ST.
 CATHARINES
 HYDRAULIC
 Co.
 v.
 THE KING.
 Argument
 of Counsel.

1910
 THE ST.
 CATHARINES
 HYDRAULIC
 Co.
 v.
 THE KING.
 Reasons for
 Judgment.

This is a Petition of Right, which was tried before me at Toronto on the 8th and 9th days of December, 1909.

The petition sets out:—

“2. On or about the 14th day of May, 1851, by an indenture of lease bearing that date and made between the Hon. Joseph Bourret and Hamilton Hartly Killaly as Commissioners of Public Works of the late Province of Canada, appointed under and by virtue of an Act of the Parliament of the late Province of Canada, passed in the ninth year of the reign of Her late Majesty, Queen Victoria, and chaptered 37, acting for and in the name of Her Majesty, her heirs and successors, of the first part, and William Hamilton Merritt, of the Town of St Catharines, in the County of Lincoln, Esquire, William D. King, of the same place, Miller, Elias Smith Adams, of the same place, Esquire, and John Gibson, of the Township of Grantham, in the said County, Esquire, of the second part, the said commissioners did demise and lease to the said parties of the second part, their executors, administrators and assigns, all those several mill races lying between the waste sluice about three hundred and fifty feet south-westerly from the mills of one Calvin Phelps on the Welland Canal, commonly known as the Red Mills, and to any part of the level between locks two and three to the Old Salt Works, together with all such right of land whereon such mill races have been constructed as also all such other rights and privileges as have been conveyed by James Dittrick, Elias Smith Adams, James Fitzgerald, John Gibson and Henry Mittleberger to the Welland Canal Company by an instrument in writing bearing date the sixth day of December, in the year of our Lord one thousand eight hundred and thirty-four.

“3. The said other rights and privileges referred to in the said lease as having been conveyed by James Dittrick

and others to the Welland Canal Company were as follows, viz. :—

“ Know all men by these presents that we, James Dittrick, Elias S. Adams, James Fitzgerald, John Gibson, and Henry Mittleberger, as directors of the St. Catharines Water Power Company for and on behalf of the said company, doth hereby assign to the Welland Canal Company all our right, title, interest, claim, and demand whatsoever in, to and upon the annexed instrument of writing granted by the landholders over whose premises is to pass the water race for propelling machinery.

“ In witness whereof we have hereunto set our hands and seals the 6th day of December, 1834.

“ Signed :—James Dittrick, E. S. Adams, James Fitzgerald, John Gibson and Henry Mittleberger.

“ The instrument of writing referred to as annexed is as follows :—

“ We, the undersigned, seeing the propriety of encouraging the erection of machinery in the village to be propelled by water, doth each one for himself individually consent to allow one or more not over twenty feet wide at surface of water race to be erected or excavated through our respective premises by the company which shall as speedily as possible be formed for that purpose as soon as the company aforesaid shall complete their arrangements ; each of the undersigned for ourselves respectively doth hereby promise and bind ourselves by this agreement to execute such writing and papers to the said company (or any person on their behalf duly authorized) upon their applying for the same, which shall be in the form of a lease in perpetuity or a quit claim.

“ St. Catharines, 24th October, 1833.

“ Signed :—Thos. Merritt, John Stuart, T. L. Converse, E. S. Adams, John T. Mittleberger, Wm. H. Sanderson, C. Beadle, Wm. Hamilton Merritt, George Adams, Wm.

1910
 THE ST.
 CATHARINES
 HYDRAULIC
 Co.
 v.
 THE KING.
 ———
 Reasons for
 Judgment.
 ———

1910
 THE ST.
 CATHARINES
 HYDRAULIC
 Co.
 v.
 THE KING.
 ———
 Reasons for
 Judgment.
 ———

C. Chase, H. U. Camp, K. Reach, H. Mittleberger, and
 Silas Vandecar.

“I will allow one or more races to pass below the upper race through my lands, and give such a title to convey the same as the other individuals have along the said race or hereafter may, or who may hereafter hold the lands where the same passes, and sign the conveyance for such rate, at the same time they do.

St. Catharines, 8th December, 1834.

“(Signed) J. H. CLENDENNEN.”

It will be necessary to refer to the lease in detail later on.

The petition then alleges as follows :—

“10. The said lease made between the said Commissioners and the said lessees under whom your suppliants claim, was never renewed or continued and those under whom your suppliants claim thereupon became entitled to and your suppliants now are entitled to the compensation provided for in the said lease in that event, and the said lessees and their assignees thereafter remained in possession, and they and those claiming under them continued to remain in possession of the said demised premises, and of their said mills and other property, pursuant to the terms of the the said lease by which they were entitled to hold possession of the same until compensation therefor should have been paid, and upon which only they were obliged to assign and surrender the same to your Majesty. And your suppliants as such assignees claiming under the said original lessees were as aforesaid in possession and receipt of the rents of the same at the time of the occurrences hereinafter mentioned.”

The petition then sets up the provisional agreement of the 23rd January, 1888, alleged to have been entered into.

The suppliants seek compensation for the failure to

continue the lease and ask performance of the alleged agreement of the 23rd January, 1888.

The Statement of Defence sets out in paragraphs 6, 7, 9 and 16 as follows:—

“6. The said lease under date of the 14th day of May, A.D. 1851, contained the express provision that the lease was to run ‘from the first day of January in the year of our Lord 1851, for and during and until the full end and term of twenty-one years renewable’ as thereafter provided, and the proviso referred to in the sixth paragraph of the petition of right, ‘in case the said Commissioners, or their successors in office should not or did not continue the said lease,’ referred to and meant the renewal of the said lease for the second term of twenty-one years and no longer,”

“7. The Attorney-General admits that after the execution of the said lease under the date of the 14th day of May, A.D. 1851; the lessees executed certain sub-leases to certain sub-lessees of parts of the demised premises in each case for a term of twenty-one years running from the 1st day of January, A.D. 1851, with the proviso that in case such sub-leases should not be renewed in the same conditions and at the same rent as therein mentioned, they, the said lessees, or their executors, administrators and assigns, should pay to the said sub-lessees, their executors, administrators or assigns, or any person or persons making erections under them or with their consent, the full value of the same to be determined by arbitration. The lessees throughout the whole term of the said lease and the renewal thereof occupied simply the position of middlemen controlling important privileges which the sub-lessees improved at their own expense, while the lessees were paying a nominal and unremunerative rental to the Crown, and collecting many times as much from their sub-lessees. The said sub-lessees having attorned to the Crown as hereinafter set out, the lessees

1910
 THE ST.
 CATHARINES
 HYDRAULIC
 Co.
 v.
 THE KING.
 Reasons for
 Judgment.

1910
 THE ST.
 CATHARINES
 HYDRAULIC
 Co.
 v.
 THE KING.
 ———
 Reasons for
 Judgment.
 ———

are not entitled to compensation or to any other legal or equitable relief in this behalf.

“9. The Attorney-General further says that the said lease was in fact renewed and continued for a second term of twenty-one years, expiring upon the first day of January, A.D. 1893, at the same rental, and the suppliants and their predecessors in title received by virtue of the said renewal and continuance of the said lease the benefit of all the rights to which they were entitled under the said lease.

“16. From and after the said first day of January, A.D. 1893, until the service of the notice to quit, referred to in the sixteenth paragraph of the petition of right, the said lessees were overholding and were tenants from year to year only, subject to the terms of the lease only in so far as the same were applicable to such a tenancy and the said lessees were in law liable to be dispossessed without compensation for improvements upon one-half year’s notice to quit being given to them.”

I expressed my views at the trial on the question as to the right of the suppliants to enforce the alleged agreement of 23rd January, 1888. I see no reason to change my opinion then expressed, and that portion of the claim I do not entertain.

It was admitted at the trial that all the sub-lessees of the suppliants have attorned to the Crown and that no claim on their behalf exists.

It was agreed by counsel for both the suppliants and the respondent that, in the event of the Court concluding that the suppliants are entitled to relief, the question of the quantum of damage, if any, to which the suppliants are entitled, should be referred.

A large mass of interesting material dating back to 1834 was produced. This material was for the purpose of showing the surrounding circumstances with the view to aiding in the construction of the lease.

The case was elaborately and ably argued by counsel for both suppliants and respondent, and since the trial I have perused their arguments and also considered the authorities cited as well as numerous other authorities. The lease is peculiar in form. I set it out in full :—

“This Indenture made in duplicate this fourteenth day of May, in the year of our Lord one thousand eight hundred and fifty-one,

“Between

“The Honourable JOSEPH BOURRET and HAMILTON HARTLEY KILLALLY, as Commissioners of Public Works of the Province of Canada (appointed under and by virtue of an Act of Provincial Parliament, 9th Victoria, chapter 37) and acting herein for and in the name of Her Majesty the Queen, Her heirs and successors of the first part,

and

“WILLIAM HAMILTON MERRITT, of the town of St. Catharines, in the County of Lincoln, Esquire, WILLIAM D. KING, of the same place, Miller, ELIAS SMITH ADAMS, of the same place, Esquire, and JOHN GIBSON, of the Township of Grantham, in the said County, Esquire, of the second part.

“Witnesseth that the said Commissioners in consideration of the rents, covenants, provisos and conditions hereinafter contained have granted, demised and leased, and by these presents do grant, demise and lease unto the said parties of the second part, their executors, administrators and assigns, all those several Mill Races lying between the Waste Sluice, about three hundred and fifty feet southwesterly from the mills of one Calvin Phelps on the Welland Canal, commonly known as the Red Mills, and to any part of the level between locks two and three to the Old Salt Works, together with all such right of land whereon such Mill Races have been constructed, as also all such other rights and privi-

1910

THE ST.
CATHARINES
HYDRAULIC
Co.
v.
THE KING.

Reasons for
Judgment.

1910
 THE ST.
 CATHARINES
 HYDRAULIC
 Co.
 v.
 THE KING
 Reasons for
 Judgment,

leges as have been conveyed by James Dittrick, Elias Smith Adams, James Fitzgerald, John Gibson and Henry Mittleberger to the Welland Canal Company by an instrument in writing bearing date the sixth day of December, in the year of our Lord one thousand eight hundred and thirty-four.

“To have and to hold the same unto the said parties of the second part, their executors, administrators and assigns from the first day of January, in the year of our Lord one thousand eight hundred and fifty-one for and during and unto the full end and term of twenty-one years, renewable as hereinafter provided: Yielding and paying therefor to the said Commissioners and their successors in office, for and on behalf of Her Majesty, Her heirs and successors through the Receiver-General of the Province, or such other officer as may be appointed to receive the same, the yearly rent or sum of one hundred and twenty-five pounds, payable in half-yearly instalments to become due and payable on the first day of January and the first day of July in each and every year, the first of which to be made on the first day of July now next; Provided always nevertheless, and these presents are upon the express condition, that should the said rent shall have been demanded or not the said Commissioners or their successors in office shall be at liberty to stop the flow or supply of surplus water hereby leased, until the amount so in arrears shall have been fully paid and satisfied. And that should said rent or any portion thereof remain unpaid during a period of six calendar months after the same shall have become due, or should the said parties of the second part, their executors, administrators or assigns fail or neglect to observe and perform all or any of the provisos and conditions herein contained, or on their part to be performed, the said Commissioners and their successors in office shall have full power and authority to re-enter in and upon the

premises hereby leased and to resume and again hold and possess all and singular the said demised premises and every part thereof, with all such flow or supply of surplus water, and as if these presents had never been executed.

“ And the said Commissioners for themselves, and their successors in office, do covenant and agree to and with the said parties of the second part, their executors, administrators and assigns, that they the said parties of the second part, their executors, administrators and assigns, during the continuance of this lease shall be entitled to enjoy the free and full use of all the surplus water of the said canal from the head of lock number eleven to the head of lock number two as aforesaid, which is not or may not be required for canal purposes, save and except the water required and as now used in and for the Mill known as the Centreville Mills erected at lock number ten also saving and excepting the water required for the mills at lock number five known as ‘ Collier’s Mills ’ and for the mills of Calvin Phelps aforesaid known as the ‘ Red Mills ’ (the latter being equivalent to six run of stones) which said surplus water so defined as aforesaid, or so much of it as the said parties of the second part may require, and which the race and aqueduct are capable of conveying, is to be delivered out of the canal at the head of lock number eleven by means of sufficient sluices to be constructed by the said Commissioners or their successors in office and to be then discharged into the present upper race near said lock number eleven leading to the said Red Mills and from thence discharging into the race built by the Welland Canal Water Power Company now in possession of John Gibson aforesaid; and also that the said parties of the second part may have and enjoy the use of such portion of said surplus water as may or shall continue to pass or be passed at locks number ten, nine, eight, seven, six, four and three, and also that the said parties of the second

1910

THE ST.
CATHARINES
HYDRAULIC
Co.

v.

THE KING.

Reasons for
Judgment.

1910
 THE ST.
 CATHARINES
 HYDRAULIC
 Co.
 v.
 THE KING.
 Reasons for
 Judgment.

part, their executors, administrators and assigns shall have full power and authority to erect such buildings and machinery as they may require for the use of said water at each of the said Locks on the lands belonging to the Department of Public Works, where there is room for the same, so long, as the said buildings and machinery do not encroach upon or interfere with the free use and navigation of the Canal, and shall also have free access and right of way to the same, the said lands to be first marked out and designated by the Superintendent or other officer in charge of the Canal, from time to time as may be required by the said parties of the second part for the purposes aforesaid; Provided always that in all cases where Mills or other buildings or machinery shall or may be erected or built at any of the Locks ten, nine, eight, seven, six, four and three aforesaid, the necessary supply gates, weirs, sluices, flumes, and races shall be made at the expense and charges of the said parties of the second part and according to plans to be first approved of and sanctioned by the Superintendent or other officer in charge of the Canal."

"And the said Commissioners do further covenant and agree to and with the said parties of the second part, their executors, administrators and assigns that the upper race with the Banks and aqueducts, from the level between Locks number eleven and twelve to the Waste Sluice southwest of the said Phelps' 'Red Mills', shall be well and sufficiently maintained and kept in repair by the said Commissioners and their successors in office and that at any future period should the works constructed by the said parties of the second part, their executors, administrators and assigns, require an increased quantity of water to be brought down through the above mentioned upper race, the necessary enlargement thereof is to be done at the proper costs and charges of the said parties of the second part, and in the event of the present wooden

aqueduct in the line of the said race failing or becoming unsafe the same shall be rebuilt and replaced by the said Commissioners or their successors in office, by one of more durable materials and of increased dimensions."

"Provided always nevertheless, and these presents are upon their further expressed condition, that the said parties of the second part, their executors, administrators and assigns, shall and will well and sufficiently maintain and keep in repair at their own proper costs and charges all and each of the other several races with their embankments, gates, flumes, weirs, sluices and other structures and should any of such races so constructed and to be constructed and maintained by the said parties of the second part, break or in any way cause damages either to the works of the said Canal or to the property of any party or parties owning lands, buildings or other property adjacent thereto, then and in such case the said parties of the second part, their executors, administrators and assigns shall and will pay and make good to the said Commissioners and their successors in office the amount of such damages, and further that in all cases where clay, sand, or any other material whatsoever may be washed into the Canal from any of the said races hereby leased or intended so to be, the same shall and may be dredged out or otherwise removed by the said Commissioners or their successors in office, and the cost of doing the same shall and may be added by the Commissioners or their successors in office to the then next ensuing half-year's rent covenanted to be paid by the said parties of the second part as aforesaid, and if not paid therewith they the said parties of the second part shall be subject to the same penalty as is above mentioned for the non-payment of the rent hereby reserved, and that in the event of the said parties of the second part, or their executors, administrators and assigns applying any portion of the above surplus water hereby leased to the pro-

1910
 THE ST.
 CATHARINES
 HYDRAULIC
 Co.
 v.
 THE KING
 Reasons for
 Judgment.

1910
 THE ST.
 CATHARINES
 HYDRAULIC
 Co.
 v.
 THE KING.
 ———
 Reasons for
 Judgment.
 ———

pulsion of any sawmill or sawmills, such mill or mills are to be constructed so as to prevent the sawdust or any other waste whatever from being carried into the canal or ponds or other waters connected therewith, in default of which it shall and may be lawful to and for the said Commissioners or their successors in office to shut off the supply of water from such mill or mills, and have the sawdust or other materials deposited in the said canal or ponds or waters connected therewith removed therefrom—the costs and charges for doing which shall be borne and defrayed by the said parties of the second part, their executors, administrators and assigns, the said costs and charges to be enforced by the stoppage by the said Commissioners or their successors in office of the supply of water to the said mill or mills, or by action or otherwise according to law; and further that the said parties of the second part, their executors, administrators and assigns shall also maintain the said works now erected or to be erected by them as aforesaid in such good and sufficient repair during the term hereby leased, as that no waste of water, or damage to the canal or to the navigation thereof shall arise from leakage therefrom or otherwise, and that in the event of the said parties of the second part, their executors, administrators or assigns refusing or neglecting to make such repairs as may in the opinion of the said Commissioners, or their successors in office, be deemed necessary for the purpose of preventing such damage, the said Commissioners or their successors in office shall be at liberty to enter upon the said premises or any part thereof and cause such repairs to be done as to them may seem proper and needful, the costs and charges whereof shall be borne and paid by the said parties of the second part, their executors, administrators or assigns, the payment of which it shall and may be in the power of the said Commissioners to enforce in the

manner hereinbefore provided with respect to the arrears of rent above reserved:

“ And further that the said Commissioners and their successors in office and their officers, shall at all reasonable times either by night or by day have free access to the said premises for any purpose that they may consider necessary connected with the management of the canal or for the purpose of examining the condition of the flumes, sluices or other works of the said parties of the second part or the works of the parties holding under them, the said parties of the second part—and ascertaining the quantity of water used or supplied through such flumes, sluices or other works.

“ And it is further agreed by and between the parties to these presents, that after the end and term of twenty-one years as aforesaid, if the said Commissioners or their successors in office shall or do not continue the lease of the said water and works to the said parties of the second part or their assigns that they the said Commissioners or their successors in office shall pay the said parties of the second part or their assigns or any person or persons making erections under them with their consent, the full amount of their expenditure, or the value of the same, for the construction of any race or water course, lands, mills, and mill houses, or any other tenement with their machinery and appurtenances thereto in any wise belonging, the same to be determined by arbitrators mutually approved of by the parties to these presents, each choosing one man and they the third, when the said parties of the second part and the parties making erections under them as aforesaid, or their assigns, shall upon receiving payment in full for the erections and appurtenances so arbitrated for as above, assign and surrender to Her said Majesty the Queen, Her heirs and successors, all their right, title and interest thereto, whether in lands, buildings, or other erections.

1910

THE ST.
CATHARINES
HYDRAULIC
Co.
v.
THE KING.
Reasons for
Judgment.

1910
 THE ST.
 CATHARINES
 HYDRAULIC
 Co.
 v.
 THE KING.

 Reasons for
 Judgment.

“And this Indenture further witnesseth that the said parties of the second part for themselves, and each of them for himself, their, and each of their executors, administrators and assigns, have covenanted, promised and agreed and hereby covenant, promise and agree to and with Her said Majesty the Queen, Her heirs and successors that they shall and will from time to time and at all times hereafter well and faithfully do, perform, fulfil and keep all and singular the agreements, stipulations, provisoes, and conditions hereinbefore contained, and which on their part and behalf are to be done, performed and kept according to the true intent and meaning of these presents.

“In witness whereof the said Commissioners of Public Works, acting in that capacity, for and in the name of Her Majesty, Her heirs and successors, and the said parties of the second part have hereunto set their hands and seals in duplicate at Toronto and St. Catharines on the day and year first above written.”

Both counsel for the suppliant and the respondent seem to be of opinion that under the terms of the lease if continued it should be for a further period of 21 years, counsel for the suppliants claiming a right to renewal in perpetuity, and counsel for the Crown contending that after the second renewal of 21 years no further right of renewal is given, and that no claim can be allowed for erections, etc.

The Crown admits by the defence quoted that after the expiration of the 21 years the lease was in fact continued for 21 years. No new document was executed but the tenancy continued on, if at all, under the original lease.

Were the facts as set out in the 10th paragraph of the petition of right the true state of facts, the suppliants might find themselves confronted by the statute of limitations. It might be held that from the end of the first term the holding was that of tenants from year to year

and that the covenant for compensation was a covenant not applicable to such a tenancy.

It will be noticed that the provision that the lessees "shall upon receiving payment in full for the erections and appurtenances so arbitrated for as above, assign and surrender to Her said Majesty the Queen or Her heirs and successors all their right, title and interest thereto whether in lands, buildings or other erections" does not refer to the water leased but to property of the lessees and sub-lessees, and it might be held that such continued occupation did not, as pleaded, preserve the rights of the suppliants. (1)

I do not however decide these questions, as I do not think the facts are as stated in the 10th paragraph of the petition of right.

The provision in the lease as to renewal is at the commencement "renewable as hereinafter provided."

The only other reference as to renewal is:—

"and it is further agreed by and between the parties to these presents that after the end and term of 21 years as aforesaid, if the said Commissioners or their successors in office shall or do not continue the lease, &c., &c."

Counsel for the suppliants argued the case as if it were a lease containing provisions for perpetual renewal from time to time. It seems to me an incorrect manner of construing the document. It is quite clear that after the expiration of the twenty-one years the Crown could determine the tenancy, the rights of the tenant being protected by the covenant for payment of expenditure.

It is quite true that the leaning of the courts is against construing a lease as one giving the right of perpetual renewal unless the terms of the lease make it plain that such was the intention. A lease, like any other document, has to be construed according to the language used

1910

THE ST.
CATHARINES
HYDRAULIC
Co.
v.
THE KING.
Reasons for
Judgment.

(1) See Porter v. Purdy, 41 S.C.R. 471.

1910
 THE ST.
 CATHARINES
 HYDRAULIC
 CO.
 v.
 THE KING.
 ———
 Reasons for
 Judgment.
 ———

within its four corners, having regard to the situation of the parties at the time of its execution and settled rules of law.

In my opinion the meaning of the document in question is that after the 21 years the lessors or their successors may continue the lease, but if at any time they do not continue the lease then the covenant for compensation operates.

By the terms of the lease the lessees, their executors, administrators and assigns "shall have full power and authority to erect such buildings and machinery as they may require for the use of said waters at each of said locks on the lands belonging to the Department of Public Works, &c."

On the termination of the lease after a second period of 21 years, if the contention of the respondent be well founded, all these buildings would be the property of the Crown without compensation. The fact that the sub-lessees have attorned and been settled with is of no consequence in arriving at a construction of the document. To place a construction on the document which would produce such an inequitable result would be, according to my views, improper.

I think the lease continued until the 1st January, 1893.

I find nothing to take away the right of the suppliants to compensation as provided by the covenant. The covenant is in force. The suppliants are entitled to a reference. The question as to whom it shall be referred may be spoken to if the parties fail to agree.

I reserve the question of costs until after the report, as it may be (the sub-lessees being arranged with) no claim may be proved.*

Judgment accordingly.

Solicitors for the Suppliants: *Mowat, Langton & Mac-lennan.*

Solicitors for the Respondents; *H. H. Dewart.*

* REPORTER'S NOTE.—On appeal to the Supreme Court of Canada the appeal was allowed with costs, but only on payment of all costs subsequent to defence if appellant desired to amend by setting up the statute of limitations.