

In the Privy Council.

No. 36 of 1934.

**ON APPEAL FROM THE SUPREME COURT
OF CANADA.**

IN THE MATTER of a Reference concerning refunds of dues paid under the terms of Section 47 (F) of the Timber Regulations in Manitoba, British Columbia, Saskatchewan and Alberta.

BETWEEN

THE ATTORNEY GENERAL OF MANITOBA, THE
ATTORNEY GENERAL OF SASKATCHEWAN, THE
ATTORNEY GENERAL OF ALBERTA and
THE ATTORNEY GENERAL OF BRITISH
COLUMBIA - - - - - *Appellants*

AND

THE ATTORNEY GENERAL OF CANADA - - - *Respondent.*

RECORD OF PROCEEDINGS.

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ON APPEAL FROM THE SUPREME COURT
OF CANADA.

IN THE MATTER of a Reference concerning refunds of dues paid under the terms of Section 47 (F) of the Timber Regulations in Manitoba, British Columbia, Saskatchewan and Alberta.

BETWEEN

THE ATTORNEY GENERAL OF MANITOBA, THE
ATTORNEY GENERAL OF SASKATCHEWAN, THE
ATTORNEY GENERAL OF ALBERTA and
THE ATTORNEY GENERAL OF BRITISH
COLUMBIA - - - - - *Appellants*

AND

THE ATTORNEY GENERAL OF CANADA - - - *Respondent.*

RECORD OF PROCEEDINGS.

No. 1.

Order of Reference by His Excellency the Governor General in Council, May 4, 1933.

P.C.833.

CERTIFIED to be a true copy of a minute of a meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 4th May, 1933.

10 The Committee of the Privy Council have had before them a report, dated 27th April, 1933, from the Acting Minister of Justice, with reference to the provisions of the regulations governing the granting of yearly licences and permits to cut timber on Government lands in Manitoba, Saskatchewan, Alberta, within twenty miles on either side of the Canadian Pacific Railway

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in the Province of British Columbia, and the tract of three and a half million acres controlled by the Government of the Dominion in the Peace River District in the Province of British Columbia (hereinafter referred to as the Timber Regulations), established by Order in Council of 26th March, 1924, and subsequent amending Orders in Council, under the authority of s. 57 of the Dominion Lands Act, chap. 113, R.S.C. 1927, and duly published in the *Canada Gazette* and validated in respect of non-compliance with the provisions of s. 75 of the said Act by chap. 44 of the Statutes of Canada, 1928; and in particular to the provisions of paragraphs (e) and (f) of s. 47 of the said Regulations, which read as follows :—

“(e) Any holder of an entry for a homestead, a purchased homestead or a pre-emption, who, previous to the issue of letters-patent, sells any of the timber on his homestead, purchased homestead or pre-emption, to owners of saw-mills or to any others without having previously obtained permission to do so from the Minister, is guilty of a trespass and may be prosecuted therefor before a justice of the peace and, upon summary conviction, shall be liable to a penalty not exceeding one hundred dollars, and the timber so sold shall be subject to seizure and confiscation in the manner provided in the Dominion Lands Act.

“(f) If the holder of an entry as above described desires to cut timber on the land held by him, for sale to either actual settlers for their own use or to other than actual settlers, he shall be required to secure a permit from the Crown timber agent in whose district the land is situated, and shall pay dues on the timber sold to other than actual settlers at the rate set out in section 42 of these regulations, but the amount so paid shall be refunded when he secures his patent.”

The Minister states that, prior to the coming into force of the several Agreements entered into between the Government of the Dominion of Canada and the Governments of the Provinces of Manitoba, British Columbia, Alberta and Saskatchewan, respectively, whereby provision was made for the transfer to the said Provinces, respectively, on the terms and conditions therein set forth, of the natural resources therein described (which said Agreements were confirmed and given the force of law by the British North America Act, 1930, 20-21 Geo. V. chap. 26 (Imp.)), permits to cut timber were, pursuant to the terms of paragraph (f) of s. 47 of the Timber Regulations, granted to entrants for homesteads, purchased homesteads, or pre-emptions on Dominion lands within the several Provinces aforementioned, and dues required to be paid as by the said Regulation provided were paid by the permittees to the Dominion Government, subject to the term or condition that the dues so paid should be refunded to the permittee when he had secured a patent for the land for which he had made entry.

The Minister further states that many such permits were outstanding and in force at the time the several Agreements with the Provinces aforementioned came into force; that a large number of the holders of such permits subsequently became entitled to, and received, patents for the lands

in respect of which they had made entry, from the Crown in the right of the Province within which such lands are respectively situate, and, thereupon, having thus become entitled to a refund of dues paid under the terms of paragraph (f) of s. 47 of the Timber Regulations, made application for such refund of dues either to the Provincial Government concerned or to the Dominion Government; that a question has arisen between the Dominion Government and the Government of each of the Provinces aforementioned whether the obligation to make the refund of dues in such cases is, under the terms of the several Agreements aforementioned, an obligation of the Provincial Governments, respectively, or of the Dominion Government, and that it is expedient that appropriate action should be taken at once to obtain a judicial determination of this question to the end that settlers, who are now admittedly entitled to a refund of such dues from either the Province or the Dominion, may be afforded relief in that regard, by the responsible Government, at an early date.

The Committee, on the recommendation of the Acting Minister of Justice, advise that Your Excellency in Council be pleased, under and in pursuance of the provisions of s. 55 of the Supreme Court Act, R.S.C. 1927, chap. 35, to refer to the Supreme Court of Canada for hearing and consideration the following questions:—

(a) Under the terms of the several Agreements aforementioned, is the obligation to refund dues, pursuant to the terms of paragraph (f) of section 47 of the Timber Regulations, in the cases aforementioned, an obligation of the Dominion or of the respective provinces?

(b) If the obligation be that of the Dominion, is the Dominion entitled to be recouped by the provinces respectively, the amount of the dues so refunded?

E. J. LEMAIRE,
Clerk of the Privy Council.

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Reference
by His
Excellency
the
Governor
General
in Council,
4th May
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No. 2.

Order for Inscription of Reference and Directions.

IN THE SUPREME COURT OF CANADA.

Before the RIGHT HONOURABLE THE CHIEF JUSTICE.

Friday, the 5th day of May, A.D. 1933.

IN THE MATTER of a reference concerning refunds of dues paid under the terms of section 47 (f) of the Timber Regulations in Manitoba, British Columbia, Saskatchewan and Alberta.

Upon the application of counsel for the Attorney-General of Canada for directions as to the inscription for hearing of the case relating to certain questions concerning refunds of dues paid under the terms of section 47 (f)

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of the Timber Regulations, in the Provinces of Manitoba, British Columbia, Saskatchewan and Alberta, referred by His Excellency the Governor General for hearing and consideration by the Supreme Court of Canada under the provisions of section 55 of the Supreme Court Act, Revised Statutes of Canada, 1927, chapter 35; upon hearing read the Order in Council, dated May 4, 1933, (P.C. 833), setting forth the said questions; on reading the affidavit of Charles P. Plaxton filed herein, and upon hearing what was alleged by counsel for the Attorney-General of Canada and for the Attorneys-General of the Provinces of Manitoba, British Columbia, Saskatchewan and Alberta, respectively :

10

IT IS ORDERED that the said case be inscribed for hearing on the 29th day of May, A.D. 1933.

AND IT IS FURTHER ORDERED that the Attorneys-General of the Provinces of Manitoba, British Columbia, Saskatchewan and Alberta be notified of the hearing of the argument of the said case by sending to each of them by registered letter on or before the 6th day of May, A.D. 1933, a notice of the hearing of the said reference and a copy of the said Order in Council, together with a copy of this Order.

AND IT IS FURTHER ORDERED that the said Attorney-General of Canada file with the Registrar of the Supreme Court of Canada his printed case on the said reference on or before the 9th day of May, A.D. 1933; and serve copies thereof forthwith upon the said Attorneys-General of the said Provinces by registered letter, or by delivering same to the Ottawa Agents of the said Attorneys-General.

20

AND IT IS FURTHER ORDERED that the Attorney-General of Canada and the Attorneys-General of the said Provinces respectively, be at liberty to file factums of their respective arguments on or before the 22nd day of May, A.D. 1933; and that they be at liberty to appear personally or by counsel upon the argument of the said reference.

AND IT IS FURTHER ORDERED that notice of the said reference be given in the Canada Gazette on or before the 13th day of May, A.D. 1933.

30

(Sgd.) LYMAN P. DUFF,
C.J.

No. 3.
Notice of Hearing.

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IN THE SUPREME COURT OF CANADA.

IN THE MATTER of a reference concerning refunds of dues paid under the terms of section 47 (f) of the Timber Regulations, in Manitoba, British Columbia, Saskatchewan and Alberta.

No. 3.
Notice of
hearing,
5th May
1933.

TAKE NOTICE THAT, by Order of His Excellency the Governor General in Council dated May 4, 1933 (P.C. 833), the following questions arising under the terms of the several Agreements for the transfer of the natural resources to the Provinces of Manitoba, British Columbia, Saskatchewan and Alberta, respectively, have been referred to the Supreme Court of Canada, for hearing and consideration pursuant to section 55 of the Supreme Court Act, R.S.C. 1927, chap. 35 :

(a) Under the terms of the several Agreements aforementioned, is the obligation to refund dues, pursuant to the terms of paragraph (f) of section 47 of the Timber Regulations, in the cases aforementioned, an obligation of the Dominion or of the respective Provinces ?

(b) If the obligation be that of the Dominion, is the Dominion entitled to be recouped by the Provinces respectively the amount of the dues so refunded ?

AND FURTHER TAKE NOTICE that, pursuant to Rule 80 of the Rules of the Supreme Court of Canada, 1929, an application will be made on behalf of the Attorney-General of Canada before the Right Honourable the Chief Justice in Chambers at the Supreme Court Building in the City of Ottawa on the 5th day of May, 1933, at the hour of 11 o'clock in the forenoon or as soon thereafter as the motion can be heard, for an Order as to the inscription for hearing of the reference aforesaid and for such other directions as to the honourable Court may seem meet.

AND FURTHER TAKE NOTICE that, upon the said application will be read the affidavit of Charles P. Plaxton, to be filed herein.

DATED AT OTTAWA, this 5th day of May, A.D. 1933.

(Sgd.) W. STUART EDWARDS,
Solicitor for the Attorney-General of Canada.

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Canada.

No. 4.

Factum of the Attorney-General for Manitoba.

STATEMENT.

No. 4.
Factum
of the
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The questions submitted for the opinion of the Court are :

(a) Under the terms of the several Agreements aforementioned, is the obligation to refund dues, pursuant to the terms of paragraph (f) of section 47 of the Timber Regulations, in the cases aforementioned, an obligation of the Dominion or of the respective provinces?

(b) If the obligation be that of the Dominion, is the Dominion entitled to be recouped by the provinces respectively, the amount of the dues so refunded? 10

In order to answer (as between Canada and Manitoba) said questions, reference will be made *inter alia* to,

(a) paragraphs (e) and (f) of section 47 of the Timber Regulations, and

(b) Sections 1, 2 and other sections of the memorandum of agreement made the 14th December, 1929 between the Government of the Dominion of Canada and the Government of the province of Manitoba, and

(c) *The Refunds (Natural Resources) Act*, being chapter 35 of 20 22-23 George V. statutes of Canada.

Paragraphs (e) and (f) of section 47 of the Timber Regulations, which by virtue of the *Dominion Lands Act* and chapter 44 of 1928 statutes of Canada have the force of a statutory enactment, are as follows :

“(e) Any holder of an entry for a homestead, a purchased homestead or a pre-emption, who, previous to the issue of letters-patent, sells any of the timber on his homestead, purchased homestead or pre-emption, to owners of saw-mills or to any others without having previously obtained permission to do so from the Minister, is guilty of a trespass and may be prosecuted therefor before a justice of the peace and, upon summary conviction, shall be liable to a penalty not exceeding one hundred dollars, and the timber so sold shall be subject to seizure and confiscation in the manner provided in the Dominion Lands Act. 30

(f) If the holder of an entry as above described desires to cut timber on the land held by him, for sale to either actual settlers for their own use or to other than actual settlers, he shall be required to secure a permit from the Crown timber agent in whose district the land is situated, and shall pay dues on the timber sold to other than actual settlers at the rate set out in section 42 of these regulations, 40 but the amount so paid shall be refunded when he secures his patent.”

The memorandum of agreement made the 14th December, 1929, between the Government of the Dominion of Canada and the Government of the province of Manitoba is found in the schedule to *The British North America Act, 1930*, being chapter 26 of 20 and 21 Geo. V. (Imp. Stat.), which confirmed said agreement and gave it the force of law.

Sections 1 and 2 of said agreement are as follows :

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“TRANSFER OF PUBLIC LANDS GENERALLY.

10 1. In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of section one hundred and nine of the *British North America Act, 1867*, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Province, and all sums due or payable for such lands, mines, minerals or royalties, shall from and after the coming into force of this agreement, and subject as therein otherwise provided, belong to the Province, subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same, and the said lands, mines, minerals and royalties shall be administered by the Province for the purposes thereof, subject, until the Legislature of the Province otherwise provides, 20 to the provisions of any Act of the Parliament of Canada relating to such administration; any payment received by Canada in respect of any such lands, mines, minerals or royalties before the coming into force of this agreement shall continue to belong to Canada whether paid in advance or otherwise, it being the intention that, except as herein otherwise specially provided, Canada shall not be liable to account to the Province for any payment made in respect of any of the said lands, mines, minerals or royalties before the coming into force of this agreement, and that the Province shall not be liable to account to Canada for any such payment made thereafter.

30 2. The Province will carry out in accordance with the terms thereof every contract to purchase or lease any Crown lands, mines or minerals and every other arrangement whereby any person has become entitled to any interest therein as against the Crown, and further agrees not to affect or alter any term of any such contract to purchase, lease or other arrangement by legislation or otherwise, except either with the consent of all the parties thereto other than Canada or in so far as any legislation may apply generally to all similar agreements relating to lands, mines or minerals in the Province or to interests therein, irrespective of who may be the parties thereto.”

40 *The Refunds (Natural Resources) Act*, being chapter 35 of 22–23 George V, Statutes of Canada, is as follows :

“An Act to authorize the Refund of Moneys received in connection with the administration of the Natural Resources.

(Assented to 13th May, 1932.)

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His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Refunds (Natural Resources) Act.*

2. The Governor in Council upon the recommendation of the Minister of the Interior may authorize the payment out of the Consolidated Revenue Fund of any sums of money representing dues, fees, guarantee deposits, credit balances, moneys paid for settlers' improvements, moneys held in trust, and other sums of money received in connection with the administration of the natural resources prior to the transfer thereof to the Provinces of Manitoba, British Columbia, Saskatchewan and Alberta, respectively, which His Majesty is under any legal obligation, or, in the opinion of the Minister, concurred in by the Governor in Council, is under any equitable obligation, to refund to any person in connection with any transactions relating to the said natural resources. 10

3. Within fifteen days after the commencement of each session of Parliament, the Minister of the Interior shall cause to be laid before both Houses of Parliament a statement of all moneys refunded under the authority of this Act, since the last preceding session of Parliament shewing the name of each person to whom any sum of money has been so refunded, the amount of money refunded, the date of each such refund and the reason therefor." 20

ARGUMENT.

INTRODUCTORY.

From the date that Manitoba was created on the 15th July, 1870, until 15th July, 1930, the ownership of lands and other natural resources within the province was vested in Canada to be administered for the purposes of Canada. See section 30 of chapter 3 of 33 Victoria (*The Manitoba Act*), confirmed by section 5 of the *British North America Act*, 1871, being chapter 28 of 34 and 35 Victoria (Imp. Stat.). 30

The homestead provisions of the *Dominion Lands Acts* and the Regulations thereunder were passed and made in furtherance of the purposes of Canada. The object of the provisions of the statutes and of the Regulations was clearly to have settlers placed on the land who would improve the land for agricultural purposes, become permanent residents and thus provide a continuous source of wealth to the country as a whole and in particular provide traffic for railways which Canada was under an obligation to build.

Sections 8 ff. of the *Dominion Lands Act*, in force on 15th July, 1930, chapter 113 of the Revised Statutes of Canada, 1927, provide for persons obtaining entries for homesteads. 40

Section 57 enacts that the Governor in Council may make regulations for the issue of permits to cut timber for certain purposes, but it should

be noted that it does not specifically refer to timber *on the homestead* of the person required to take out the permit.

However, under the Regulations which were made this section and section 103 were interpreted as giving the right to impose a payment on homesteaders who cut timber and sold it to other than actual settlers with the condition that the amount so paid should be refunded when the patent was secured.

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PARAGRAPH (f).

10 In the administration of public lands it has been found expedient to enact provisions to guard against persons becoming homesteaders or such like for the sole purpose of making a business of cutting and selling the timber on the land.

Said paragraphs (e) and (f) which must be read and considered together are provisions such as are referred to above. Said paragraph (f) provides for a fund in the nature of guarantee deposit fund to assure that the scheme of the Act would be carried out and as such should be considered a fund held in trust for that purpose. Section 103 of the *Dominion Lands Act* is a provision similar to said paragraph (e).

20 Hence it is submitted that any amount paid under said paragraph (f) by "the holder of an entry" (who can be referred to as a "homesteader") was a guarantee deposit by the said homesteader to assure that he was a bona fide settler and not a person who had become "the holder of an entry" for the sole purpose of cutting and selling the timber to other than actual settlers.

It is submitted that in this matter which is of public interest reference can be made to the published public records of the Government of Canada relative to said dues paid under said paragraph (f). See *Re Branch Lines Can. Pac. Ry. Co.*, (1905) 36 S.C.R. 42, at p. 73.

30 The measure or unit of the guarantee deposit was the "dues on the timber sold to other than actual settlers at the rate set out in section 42 of these regulations," which is entirely reasonable as an arbitrary guarantee might work a hardship in certain cases.

The dues which had to be paid were "dues on the timber *sold* to other than actual settlers at the rate set out in section 42 of these regulations," that is, on something separate and apart from the land and estimated on the number of cords, etc. In no sense was the "amount so paid" a payment in respect of the land.

40 The promise of repayment was a collateral advantage held out to encourage the completion of homestead duties and thus achieve the end that Canada had in view.

The closing part of said paragraph (f) imposes an obligation on the Government of Canada to refund to the homesteaders the amount paid when they secured their patents. Clear language will be required to displace this obligation.

It is submitted that a perusal of the provisions of said agreement dated 14th December, 1929, and of said chapter 35 points to the conclusion

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that when said agreement was made the parties had either excluded the matter of the liability for the refund of these dues from their arrangements or had it not in contemplation. See *Attorney-General of British Columbia v. Attorney-General of Canada*, 14 App. Cas. 295 at p. 305 (Precious Metals Case). In such a case the liability to refund said dues would remain a liability of Canada as it was before said agreement was made and there would be no right of recoupment in favor of Canada against Manitoba.

However, having determined above the nature of these amounts paid by homesteaders under said paragraph (f) it is advisable to refer to those parts of the said statutory agreement entered into between Canada and Manitoba which Canada may contend frees it from liability and imposes liability on Manitoba. 10

SECTION 1.

The earlier part of said section 1 ending with the words "administration" is legislation analogous to section 109 of the *British North America Act*, 1867. Like said section 109 it imports that the right to the beneficial use or to the proceeds of the public land, etc., has been appropriated to Manitoba and is subject to the control of its legislature the land, etc., being vested in the Crown. See *St. Catharine's Milling and Lumber Company v. The Queen*, 14 App. Cas. 46, at p. 56 (1888). 20

It is submitted that such earlier part of said section 1 has no application to these dues paid by homesteaders.

Canada may rely on the latter part of said section 1 beginning with the words "any payment received" as freeing it from liability and imposing liability on Manitoba relative to refunding these dues to the homesteaders in Manitoba.

The said latter part of said section 1 sets out the agreement between Canada and Manitoba as to what payments received by Canada before 15th July, 1930, shall continue to belong to Canada. It is any payment received by Canada in respect of any such land, etc. That is payments received by Canada for value given or as of right and not payments received conditionally or by way of a guarantee deposit: *Bates v. Bates*, (1888) 14 P.D. 17. 30

Said section 1 in its said latter part sets out in specific language the intention of the parties, viz. :

"it being the intention that, except as herein otherwise specially provided, Canada shall not be liable to account to the Province for any payment made in respect of any of the said lands, mines, minerals or royalties before the coming into force of this agreement and that the Province shall not be liable to account to Canada for any such payment made thereafter." 40

It is submitted that in so far as the matter of "payments" is concerned, said section 1 relates only to payments in respect of any such lands, mines and minerals. It provides *inter alia* for matters as between Canada and the province but in no way does it deal with this matter of

refund of dues which existed as between Canada and the homesteaders. It does not in any way displace the obligation of the Government of Canada to make refunds to homesteaders which arises under the concluding words of said paragraph (f).

It is submitted that said section 1 clearly does not apply to the matter of an amount of dues paid on the timber sold to other than actual settlers.

Sections 8 and 17 of said agreement dated 14th December, 1929, are illustrations of specific provisions being inserted in said agreement dated 14th December, 1929, when it was desired to impose liability on Manitoba to make payments to Canada; that is, when it was desired to make Manitoba liable to recoup Canada for payments made or to be made by Canada.

Hence as far as said section 1 is concerned, it is submitted that no obligation is imposed on Manitoba to refund dues pursuant to the terms of said paragraph (f) while the obligation of the Government of Canada imposed by said paragraph (f) is not interfered with and no right of recoupment is given to Canada as against Manitoba.

Hence as far as said section 1 is concerned, the said two questions submitted to the court should be answered as follows (as between Canada and Manitoba):

Question (a)

Under the terms of the several Agreements aforementioned, is the obligation to refund dues, pursuant to the terms of paragraph (f) of section 47 of the Timber Regulations, in the cases aforementioned, an obligation of the Dominion or of the respective provinces?

Answer to question (a)

The obligation to refund said dues is an obligation of the Dominion.

30 Question (b)

If the obligation be that of the Dominion, is the Dominion entitled to be recouped by the provinces respectively, the amount of the dues so refunded?

Answer to question (b)

No.

SECTION 2.

Canada may rely also on said section 2 as freeing it from liability and as imposing liability on Manitoba relative to refunding these dues to the homesteaders in Manitoba.

40 It is submitted at the outset that the matter of "payments" having been specifically dealt with in section 1 no argument relative thereto can be founded upon section 2. *Expressum facit cessare tacitum*. See *Beal's Cardinal Rules of Legal Interpretation*, (3rd Ed.), p. 140.

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If, however, said section 2 is examined and interpreted it is submitted that the answers it supplies to the said two questions are adverse to the contentions of Canada.

It appears that as far as the matter now in controversy is concerned the word "arrangement" is the important word. It is coupled with the words which precede viz. "every contract to purchase or lease any Crown lands, mines or minerals." Under the *ejusdem generis* principle the word "arrangement" being a general word must be confined to subjects *ejusdem generis* to "contract to purchase" and "lease."

Stag Line, Limited v. Foscolo, Mango and Company, Limited, (1932), 10 App. Cas. 328, at p. 334.

The Law Journal (magazine) vol. 72 (Dec. 26th, 1931) at pp. 420, 421.

The Law Times (magazine) vol. 172 (Dec. 19th, 1931) at p. 482.

Beal's Cardinal Rules of Legal Interpretation, (3rd Ed.), at p. 356.

If it had been intended to include all arrangements the words "every contract to purchase or lease any Crown lands" would have been omitted.

It is submitted that the right to cut timber and much more the matter of refund of the dues does not come within "contract to purchase" and "lease" and hence is not covered by said section 2.

Hence said section 2 does not in any way displace the liability placed 20 on Canada by the closing words of said paragraph (f) and does not give to Canada any right of recoupment as against Manitoba.

INTEREST IN LAND.

Said section 2 refers to "any other arrangement whereby any person has become entitled to an interest in any Crown lands."

The homesteader has the right to cut timber as long as it was not for sale. The right to cut timber for sale is secured when "the holder of an entry" secures the permit from the Crown timber agent. The permit being yearly enabled the Government to keep a check on the timber cut by the homesteader.

If the right to cut timber is an "interest in land" then the amount paid for dues on the timber sold to other than actual settlers is something which occurs after the "interest" is acquired and is no part of the arrangement. It therefore follows that the right to a refund of said dues is no part of the arrangement.

Hence as far as said section 2 is concerned, the said two questions submitted to the Court should be answered as follows (as between Canada and Manitoba):

Question (a)

Under the terms of the several Agreements aforementioned, is 40 the obligation to refund dues, pursuant to the terms of paragraph (f) of section 47 of the Timber Regulations, in the cases aforementioned, an obligation of the Dominion or of the respective provinces?

Answer to question (a)

The obligation to refund said dues is an obligation of the Dominion.

Question (b)

If the obligation be that of the Dominion, is the Dominion entitled to be recouped by the provinces respectively, the amount of the dues so refunded?

Answer to question (b)

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10 It appears that no part of said agreement dated 14th December, 1929, other than said sections 1 and 2 can be relied on by Canada to place the obligation aforesaid on Manitoba. A careful perusal of said agreement shews that when special trusts, special payments or other such matters were agreed on specific provisions were inserted in the agreement relative thereto. There is no specific provision in said agreement relative to the refund of said dues.

LEGISLATIVE RECOGNITION.

20 The said the *Refunds (Natural Resources) Act* being chapter 35 of 22-23 George V. statutes of Canada, is a legislative recognition by the Parliament of Canada of the liability of Canada to refund these dues on the timber sold to other than actual settlers when patents were secured.

Said chapter 35 was enacted about two years after the enactment of the said the *British North America Act, 1930*, and makes specific provision for "guarantee deposits", "moneys held in trust".

It imposes no liability on Manitoba to make payment either to the homesteaders or to Canada.

The legislature it is admitted are the best interpreters of their own laws. See,

30 *Doe Anderson v. Todd et al*, 2 Upper Canada Q.B. Reports (1845) 82 at p. 88.

Citizens Insurance Company of Canada v. Parsons, (1881) 7 App. Cas. 96 at p. 116.

Macdonnell v. Purcell, 23 S.C.R. (1894) 101 at p. 114.

In re Branch Lines Can. Pac. Ry. Co., 36 S.C.R. (1905) 42 at pp. 81-82, 88.

Sheppard v. Sheppard, 13 B.C.L.R. (1908) 486 at p. 517.

Watts v. Watts, 1908 App. Cas. 573 at p. 579 where *Sheppard v. Sheppard* is referred to as "a very able and elaborate judgment".

40 Counsel for the Attorney-General of Manitoba in this reference which involves matters of public interest and in which no evidence has been taken will ask the court to allow said counsel to refer to the Parliamentary Debates (as reported in Hansard) leading up to the enactment of said chapter 35 by the Parliament of Canada and further will ask the court to allow said counsel to explain to the court how the Government of Canada subsequent to the 15th July, 1930, has interpreted

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the liability of Canada to make refunds similar to those involved in this reference.

On this point reference is made to—

Toronto Railway Company v. The Queen, (1894) 4 Exchequer Court Reports 262.

In re Branch Lines Can. Pac. Ry. Co., (1905) 36 S.C.R. 42, at p. 73.

Hence if the Parliament of Canada by said chapter 35 and by what is set out above explained unequivocally the meaning of said agreement dated 14th December, 1929 and recognized the liability of Canada to make the said refunds under said paragraph (f) and recognized no liability of Manitoba to make payment either to the homesteaders or to Canada it follows that said questions as between Canada and Manitoba must be answered adversely to Canada.

W. J. MAJOR,

Attorney-General of Manitoba.

Winnipeg, 10th May, 1933.

No. 5.

Factum of the Attorney-General for Saskatchewan.

PART I.

20

STATEMENT OF CASE.

No. 5.
Factum
of the
Attorney-
General for
Saskatche-
wan.

1. This is a reference by the Governor-General in Council asking this Court to determine (a) whether Canada or the Province is liable to repay to homesteaders certain moneys paid by them to Canada for licenses to cut timber on their respective homesteads and (b) whether, if Canada is liable, it has a right over against the Province in which the homestead lies.

2. By the *Dominion Lands Act* (last consolidated as R.S.C. c. 113) certain persons were given the right to make homestead entries on certain lands, it being provided (s. 8) that an entry for a homestead should *not* convey any right to minerals or any property or interest in waters. The same part of the Act contained provisions specifying the conditions to be fulfilled by the holder of a homestead entry in order that he should become entitled to a Crown grant or patent for the lands to which the entry related (ss. 16-27). In another part of the Act it was provided (s. 103) that "any holder of an entry for a homestead" who before obtaining a patent, and without permission from the Minister, sold any of the timber on his homestead "to owners of saw mills or to any other than settlers for their own exclusive use" should be guilty of trespass.

3. Section 57 of the same Act authorized the Governor-General in Council to make regulations for the issue of permits to cut timber for defined

40

purposes on Dominion lands generally, that is on lands not in private hands. The subject of such permits is further dealt with in sections 58-70. This regulatory power was exercised and among the regulations are now found included clauses 47 (e) and (f) which relate to the subject dealt with by s. 103, namely the right of a homesteader to cut timber on his homestead before obtaining his patent therefor.

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4. These clauses purport considerably to extend the provisions of section 103. The first of them provides that it shall be a trespass for a homesteader to sell any of the timber on his homestead without permission
10 even to settlers for their own exclusive use, the expression used being “to owners of saw mills or to any others”. The second of them requires a homesteader to obtain a permit from the proper Crown timber agent if he “desires to cut timber on the land held by him for sale to either actual settlers for their own use or to other than actual settlers”. It proceeds to direct that he “shall pay dues” at rates set out in clause 42 “on the timber sold to other than actual settlers”, and concludes with the words “but the amount so paid shall be refunded when he secures his patent”.

5. By section 75 of the *Dominion Lands Act* it was provided that any regulations authorized by that Act to be made by the Governor-General
20 in Council should come into force only upon their publication in the Canada Gazette and should cease to have effect unless approved by resolutions of the Senate and House of Commons at the next following session. It does not appear whether clauses 47 (e) and (f) were either published in the Canada Gazette or approved as required, but the approval was in any event rendered unnecessary by the statute 1928, c. 44, by which it was provided that regulations theretofore made under the *Dominion Lands Act* should have the same force and effect as if the required approval had been given. (This statute is printed in the appendix to this factum).

6. The typical form of permission set out in the Record (pp. 90, 91)
30 appears to be the same form as would be used for permits under the regulations made by virtue of section 57 of the Act with respect to the cutting of timber on Dominion lands generally. It is adapted for issue only on the anticipatory payment by the applicant of an amount representing dues which would become payable on the cutting of the quantity of timber authorized to be cut. It does not make any reference to the status of the person to whom the timber may be sold or the use to which the purchaser may put it. Provision is moreover made for the collection of an “office fee” of one dollar in addition to the dues; the collection of such a fee is authorized by clause 43 of the regulations.

40 7. That the form was intended to be used for homesteaders’ permits under clauses 47 (e) and (f) of the regulations is to be inferred not only from its inclusion in the Case but also from footnotes warning the permittee that if he is the holder of a homestead entry, his patent will not issue until the permit is turned in and “excess dues, if any, paid”. On the reverse of the permit is a form of affidavit to be made by the permittee when the

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permit is turned in. The return called for by this affidavit is one giving the amount of timber "cut or caused to be cut or taken off any Dominion lands". No statement as to the destination or use of the timber is asked for, and on neither side of the form is any mention made of any circumstances entitling the permittee to the repayment of any part of any payment made by him either originally or upon the return of the permit.

8. In accordance to what appears to have been the practice, the typical form included in the Record acknowledges the receipt from one William Birch of \$57.00 in consideration of an authorization to Birch "to cut and take for his own use or for the purpose of barter or for sale" 10
56 cords of spruce pulpwood from his homestead. The \$57.00 represents the regulation fee of \$1.00 payable under clause 42 of the regulations in respect of each cord of pulpwood other than poplar authorized to be cut and one dollar for the office fee. The permit is dated March 25th, 1930, and calls for the making of a sworn return "on or before the 30th day of April next". On its reverse side appears an affidavit made by William Birch on October 17th, 1931, to the effect that he has cut "18 cords of dry wood other than poplar: tamarac". There is nothing to indicate how the wood cut was disposed of or anything to suggest that at that stage Birch obtained a refund of any part of the dues he had paid eighteen 20
months earlier. Indeed such a refund could not at that time have been made unless authorized by a parliamentary appropriation.

9. Such an authorization was, however, later given. When the B. N. A. Act, 1930, took effect, and the Dominion lands in Alberta, British Columbia, Manitoba and Saskatchewan were transferred to the provinces in which they lay, there were in the hands of the Government of Canada considerable sums of money received for the issue of permits to homesteaders to cut timber on their homesteads. On their respectively fulfilling the conditions required for the issue of their patents, the homesteaders demanded the repayment of the sums respectively paid by them, and 30
authority to make such refunds without any parliamentary appropriation was given to the Governor-General in Council by the *Refunds (Natural Resources) Act* (1932, c. 35), a copy of which is printed as an appendix to this factum.

10. The question for determination on the present reference is whether, under the agreements confirmed by the B. N. A. Act, 1930, the ultimate liability for the amounts of the appropriate refunds rests upon Canada, by which the money was received and held in trust, or upon the Province in which the lands lie and to which no transfer of the trust moneys was ever made. 40

11. By the first paragraph of that one of these agreements which was made with the Province of Saskatchewan, Canada transfers to the Province the Crown lands, mines, minerals and royalties in the Province and the right to any sums of money due in respect of them. The other provisions which alone seem to be conceivably relevant to the present question are the

concluding clause of paragraph 1 and the first clause of paragraph 2. These are in the following terms :—

10 “ 1. (*Concluding clause*) Any payment received by Canada in respect of any such lands, mines, minerals or royalties before the coming into force of this agreement shall continue to belong to Canada whether paid in advance or otherwise, it being the intention that, except as herein otherwise specially provided, Canada shall not be liable to account to the Province for any payment made in respect of any of the said lands, mines, minerals or royalties before the coming into force of this agreement, and that the Province shall not be liable to account to Canada for any such payment made thereafter ”.

“ 2. The Province will carry out in accordance with the terms thereof every contract to purchase or lease any Crown lands, mines or minerals and every other arrangement whereby any person has become entitled to any interest therein as against the Crown ”.

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PART II.

ARGUMENT.

20 The Attorney-General of Saskatchewan makes the following submissions:

12. It appears to be gravely doubtful if the provisions of s. 103 of the *Dominion Lands Act* have been properly carried into effect and if there could in any event be any liability upon the Province in respect of the sums actually collected from homesteaders for timber permits. It seems, however, unnecessary to deal with this question at this stage, and attention is therefore immediately directed to the effect of the relevant provisions of the agreement.

30 13. The concluding clause of paragraph 1 of that agreement has, it is submitted, no application. All that it purports to do is to provide that there shall be no accounting as between Canada and the Province in respect of payments made before or after the agreement comes into effect, the Province being excluded from asserting any claim to any sum received by Canada before that time and Canada from asserting any claim to any sum received by the Province thereafter. Canada does not here assert any claim to which this provision could have any application, and the clause cannot be interpreted as conferring any right upon a homesteader as against the Province.

40 14. The possibility of interpreting any of the clauses of the agreement as altering the character of any rights vested in third parties depends upon the effect of the terms used in the B. N. A. Act, 1930, itself and in the Dominion and provincial statutes recited in the preamble to it (1930, c. 3 (Ca.); 1930, c. 41 (Sask.)). The agreement standing alone could of course not alter such rights, but when occasion arises it may be necessary

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to consider whether its confirmation effected a novation. This question seems to be immaterial for the purpose of the present case.

15. Whether or not any persons formerly having rights against Canada in respect of lands in Saskatchewan may now assert any of these direct against the Province, paragraph 2 of the agreement cannot be interpreted as imposing any liability on the Province for the refunds now in question.

By that paragraph the Province merely agrees to “carry out in accordance with the terms thereof . . . every . . . arrangement whereby any person has become entitled to any interest” in any Crown lands, mines or minerals “as against Canada”. A homesteader who obtained such a permit as is now in question would not, by applying for it and paying the amount required as a condition precedent to its issue, become entitled to any interest whatever in lands as against Canada. The only right in him which flowed from the transaction was the right to demand, after the occurrence of a certain event, that the sums he had paid should be refunded to him. The claim was one for money and nothing else. 10

16. The event which gave rise to his right to demand the refund was the issue of a patent to the lands upon which the timber was cut. As the regulations expressed it, the refund became payable “when he 20 (the homesteader) secures his patent”. By whom the patent is issued is a matter of complete indifference. The transaction which gave rise to the right to its issue was one entirely separate from that in connection with which the money claimed was originally paid. That by an arrangement subsequent to its payment a change was made in the channel through which the patent reached the homesteader, is entirely irrelevant to the question of liability for the refund.

17. The construction which it has been submitted should properly be placed upon the relevant clauses of the agreement is strongly reinforced by the fact of its also including the special clauses dealing with the school 30 lands fund (para. 6) and seed grain liens (para. 18). It is also reinforced by the special clause with respect to the Winnipeg River contained in the substantially contemporaneous and otherwise almost identical agreement with the Province of Manitoba (para. 8).

18. The Province of Saskatchewan accordingly submits that so far as it is concerned the formal answer to the first of the questions submitted should be that the obligation to refund dues is not an obligation of the Province, and to the second that it is not liable to recoup to Canada the amount of any dues Canada may refund.

O. M. BIGGAR 40

of counsel for the Attorney
General of Saskatchewan.

APPENDIX.

1928, CHAP. 44.

An Act relating to the submission to Parliament of certain Regulations and Orders in Council.

(Assented to 11th June, 1928).

His Majesty by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. Orders in Council or Regulations heretofore made by the Governor in Council under authority of *The Railway Belt Water Act*, chapter forty-seven of the statutes of 1912; *The Dominion Forest Reserves and Parks Act*, chapter ten of the statutes of 1911; *The Dominion Lands Act*, chapter twenty of the statutes of 1908; the *Rocky Mountains Park Act*, chapter sixty of the Revised Statutes of Canada, 1906, or the *Yukon Act*, chapter sixty-three of the Revised Statutes of Canada, 1906, are hereby declared to have the same force and effect as if they had been approved by both Houses of Parliament as required by said Acts respectively.

1932, CHAP. 35.

An Act to authorize the Refund of Moneys received in connection with the administration of the Natural Resources.

(Assented to 13th May, 1932).

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. This Act may be cited as *The Refunds (Natural Resources) Act*.
2. The Governor in Council upon the recommendation of the Minister of the Interior may authorize the payment out of the Consolidated Revenue Fund of any sums of money representing dues, fees, guarantee deposits, credit balances, moneys paid for settlers' improvements, moneys held in trust, and other sums of money received in connection with the administration of the natural resources prior to the transfer thereof to the Provinces of Manitoba, British Columbia, Saskatchewan and Alberta, respectively, which His Majesty is under any legal obligation, or, in the opinion of the Minister, concurred in by the Governor in Council, is under any equitable obligation, to refund to any person in connection with any transactions relating to the said natural resources.
3. Within fifteen days after the commencement of each session of Parliament, the Minister of the Interior shall cause to be laid before both Houses of Parliament a statement of all moneys refunded under the authority of this Act since the last preceding session of Parliament, shewing the name of each person to whom any sum of money has been so refunded, the amount of money refunded, the date of each such refund and the reason therefor.

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No. 6.

Factum of the Attorney-General for Alberta.

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I.

STATEMENT OF FACTS.

No. 6.
Factum
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Prior to October 1930, the Natural Resources situate within the Province of Alberta were administered by the Dominion through the Department of the Interior. By various sections of The Dominion Lands Act, now R.S.C. 1927, Chapter 113, the Governor in Council was empowered to make regulations for the issue of permits to cut timber. Pursuant to the authority, Regulations were made entitled "Regulations Governing the Granting of 10
Yearly Licenses and Permits to Cut Timber on Dominion Lands," Section 47 paragraphs (e) and (f) of which read as follows:—

" (e) Any holder of an entry for a homestead, a purchased homestead or a pre-emption, who previous to the issue of letters patent, sells any of the timber on his homestead, purchased homestead or pre-emption, to owners of sawmills or to any others without having previously obtained permission to do so from the Minister, is guilty of a trespass and may be prosecuted therefor before a justice of the peace and, upon summary conviction, shall be liable 20
to a penalty not exceeding one hundred dollars, and the timber so sold shall be subject to seizure and confiscation in the manner provided in The Dominion Lands Act.

(f) If the holder of an entry as above described desires to cut timber on the land held by him, for sale to either actual settlers for their own use or to other than actual settlers he shall be required to secure a permit from the Crown timber agent in whose district the land is situated, and shall pay dues on the timber sold to other than actual settlers at the rate set out in Section 42 of these regulations, but the amount so paid shall be refunded when he secures his patent." 30

Pursuant to the terms of the said paragraphs and over a period of many years, permits were granted by the Dominion to entrants for homesteads in the Province of Alberta and the dues required to be paid as provided by Section 47 (f) supra, were paid to the Dominion.

By Agreement made the fourteenth day of December, 1929, between The Government of the Dominion of Canada and The Government of the Province of Alberta, the commonly called Natural Resources of the Province and the administration thereof were transferred to the Government of the Province. The text of the Agreement is set out in full at page 61 of the Record. 40

Since the first day of October, 1930, the date upon which the said Agreement became effective in the Province of Alberta, applications have been made to the Provincial Department of Lands and Mines for refund of

timber dues paid to the Dominion pursuant to the provisions of Section 47 (f) of the Dominion regulations. The Province has refused to make any refund and has referred the applicants to the Dominion. In the result this reference has been directed.

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II.

ARGUMENT.

There can be no question but that the Province can only be held liable, if at all, under the terms of the Natural Resources Agreement, and presumably only under the terms of Section 1 and Section 2 thereof.

No. 6.
Factum
of the
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Alberta—
continued.

10 AS TO SECTION 1 OF THE AGREEMENT.

Section 1 reads, in part, as follows :

“ . . . any payment received by Canada in respect of any such lands, mines, minerals or royalties before the coming into force of this agreement shall continue to belong to Canada whether paid in advance or otherwise, it being the intention that, except as herein otherwise specially provided, Canada shall not be liable to account to the Province for any payment made in respect of any of the said lands, mines, minerals or royalties before the coming into force of this agreement, and that the Province shall not be liable to
20 account to Canada for any such payment made thereafter.”

It seems clear that what was deemed to belong to Canada by Section 1 were payments of money made to the Dominion on account of the sale, leasing, or other disposition of Crown Lands whether or not the disposition had or had not been completed at the date of the agreement. The said monies were deemed to be the absolute property of Canada. The use of the words “continue to belong” in Section 1 is a clear indication that the Section dealt only with monies which at the date of the Agreement had become the absolute property of Canada.

The monies passing from the homestead entrant to the Dominion
30 under Section 47 (f) of the Dominion Regulations were not, properly regarded, “payments received by Canada” but merely monies deposited with the Dominion subject to refund. Section 47 (f) requires that if a homestead entrant desires to cut timber on his homestead for sale he must first secure a permit from the Crown and pay dues on the timber sold to others than actual settlers, with the proviso that the dues so paid shall be refunded to him when he secures his patent.

The word “payment” connotes finality and it cannot in the construction of this Agreement be deemed to include monies paid by way of deposit. A parallel is afforded in some of the Sections of The English
40 Debtors Act, 1869. Section 4 of that Act provided that, after the passing of the Act, no person should be arrested or imprisoned for making default “in payment of a sum of money.” In *Bates vs. Bates* (1888) 14 P.D. 17, an Order for Attachment was sought against a husband who had failed to obey an Order of the Court requiring him to pay into Court £40 to cover

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General for
Alberta—
continued.

the estimated costs of the plaintiff wife or to give a bond therefor. It was held that the payment required by the Order was not “payment of a sum of money” under The Debtors Act. Lindley, L.J., says at p. 20:

“The question turns upon the words of the 4th Section of The Debtors Act. It is said that the appellant is within the protection of the Act, because he has made default in payment of a sum of money. But what do the words “payment of money” in this Section mean? In my opinion, they do not mean depositing a sum of money in court, to abide an order to be subsequently made. If the appellant had been ordered to pay the money to the receiver 10 of the Court in discharge of an obligation to which he had been declared liable, that might be different. But that is not so here; he is to deposit the money in Court, or to give security for it.”

This reasoning seems to apply forcibly to the case at bar.

By the regulation the monies received by the Dominion from a homestead entrant in respect of the licence to dispose of timber cut upon his homestead are refundable upon his obtaining patent. The monies do not become the absolute property of the Dominion until the entrant’s right to obtain patent has been extinguished.

It is submitted that the deposit made cannot be said to be a “payment” 20 within the meaning of Section 1 of the Natural Resources Agreement and that no liability on the part of the Province can be founded upon that Section.

AS TO SECTION 2 OF THE AGREEMENT.

A liability on the part of the Province is also asserted under Section 2 of the Agreement, which reads as follows:

“The Province will carry out in accordance with the terms thereof every contract to purchase or lease any Crown lands, mines or minerals and every other arrangement whereby any person has become entitled to any interest therein as against the Crown, and 30 further agrees not to affect or alter any term of any such contract to purchase, lease or other arrangement by legislation or otherwise, except either with the consent of all the parties thereto other than Canada or in so far as any legislation may apply generally to all similar agreements relating to lands, mines or minerals in the Province or to interests therein irrespective of who may be the parties thereto.”

It is submitted that the matter of the retention of payments having been dealt with specifically in Section 1, Section 2 cannot be examined to found any claim. *Expressum facit cessare tacitum.* See Beal’s Cardinal Rules, 3rd Edition p. 140. 40

By Section 2, the Province agreed to carry out, according to its terms, every contract to purchase or lease Crown lands and every arrangement whereby any person had become entitled to an interest in Crown lands. The quasi-contractual relationship arising out of a homestead entry was

doubtless such an arrangement and the covenant made required the Province to continue the said relationship and issue patent upon completion by the entrant of the terms imposed by the Dominion. But the rights and liabilities of a homestead entrant in the matter of timber dues under Regulation 47(f) supra, are not, it is submitted, in any way referable to the arrangement pursuant to which the entrant is entitled to obtain patent. Applications for homestead entry were made under Regulations relating to Dominion lands as such. The said Regulations which were in force at the time of the Natural Resources Agreement contain no reference to the cutting of timber and the payment of dues thereon. The latter are dealt with in separate Regulations governing the granting of yearly licenses and permits to cut timber on Dominion lands and in those Regulations the cutting of timber by homestead entrants is dealt with in conjunction with the general subject of cutting timber on all Dominion lands. They are clearly collateral to the homestead Regulations proper. The covenant of the Province in Section 1 of the Agreement is a covenant to carry out . . . every . . . arrangement whereby any person has become entitled to any interest (in Crown lands, mines or minerals) as against the Crown. It seems obvious that the right of a homestead entrant to obtain a return of his deposit for timber dues is not an interest in lands, mines or minerals.

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It is to be observed that the permit which the entrant is required to obtain under Regulation 47(f) has to do with the sale of timber after it has been cut. It is not a permit to cut, because the entrant has that right without any permit, the permit merely relieves him from the penal consequences of Section 103 and the conditional payment of dues is imposed when permit is issued. In other words, it deals with timber as a chattel and not as part of the land.

Edmonton, 13th May, 1933.

30

J. J. FRAWLEY,
Of Counsel for the Attorney General for
the Province of Alberta.

No. 7.

Factum of the Attorney-General for British Columbia.

I.

This is a reference to determine whether the Dominion or the Province of British Columbia is liable under the Railway Belt Re-Transfer Agreement to refund to settlers who have secured patents of their homesteads in the Railway Belt the money which the Dominion has collected from them under the terms of Section 47 (e) and (f) of the Dominion Timber Regulations which provide that the full amount so collected shall be refunded to them when they secure their patents.

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No. 6.
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No. 7.
Factum
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No. 7.

Factum
of the
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continued.

Section 47 (e) and (f) reads as follows :—

“(e) Any holder of an entry for a homestead, a purchased homestead or a pre-emption, who, previous to the issue of letters-patent, sells any of the timber on his homestead, purchased homestead or pre-emption, to owners of saw-mills or to any others without having previously obtained permission to do so from the Minister, is guilty of a trespass and may be prosecuted therefor before a justice of the peace and, upon summary conviction, shall be liable to a penalty not exceeding one hundred dollars, and the timber so sold shall be subject to seizure and confiscation in the manner provided 10 in the Dominion Lands Act.

(f) If the holder of an entry as above described desires to cut timber on the land held by him, for the sale to either actual settlers for their own use or to other than actual settlers, he shall be required to secure a permit from the Crown timber agent in whose district the land is situated, and shall pay dues on the timber sold to other than actual settlers at the rate set out in section 42 of these regulations, but the amount so paid shall be refunded when he secures his patent.”

The Agreement in question will be found in the Statutes of British 20 Columbia, 1930, chap. 60; Statutes of the Dominion, chap. 37; Imperial Statutes, 20–21 Geo. V. c. 26, and the relevant clauses read as follows— (Record pages 69 and 70).

“2. Any payment received by Canada before the coming into force of this agreement in respect of any interest in the said lands shall continue to belong to Canada, whether paid in advance or otherwise, without any obligation on the part of Canada to account to the Province therefor, and the Province shall be entitled to receive and retain any such payment made after the coming into force of this agreement without accounting to Canada therefor. 30

3. The Province will carry out in accordance with the terms thereof every contract to purchase or lease any interest in any of the lands hereby transferred and every other arrangement whereby any person has become entitled to any interest therein as against Canada, and will perform every obligation of Canada arising by virtue of the provisions of any statute or order in council or regulation affecting the said lands thereby transferred to any person entitled to a grant of lands by way of subsidy for the construction of railways or otherwise, or to any railway company for grants of land for right of way, roadbed, stations, station grounds, workshops, buildings, yards, 40 ballast pits or other appurtenances.”

The questions referred to the Supreme Court of Canada read as follows— (Record page 5) :—

(a) Under the terms of the several Agreements aforementioned, is the obligation to refund dues, pursuant to the terms of paragraph

(f) of section 47 of the Timber Regulations, in the cases aforementioned, an obligation of the Dominion or of the respective provinces?

(b) If the obligation be that of the Dominion, is the Dominion entitled to be recouped by the provinces respectively, the amount of the dues so refunded?

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—
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of the
Attorney-
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Columbia—
continued.

II.

The Province contends:—

- 10 1. That the timber dues in question were not “payments” within the meaning of Section 2 of the Agreement which deals with “payments” received by Canada . . . “in respect of any interest in the said lands.”
2. That if they were such “payments,” they were not made “in respect of any interest in the said lands.”
3. That only by express words of the Agreement could the Province’s liability arise and that there are no words in the Agreement giving rise to such liability.

III.

20 As to the first contention, the word “payment” connotes finality. In view of the provisions in the Regulations for refund the dues were paid merely by way of deposit to be refunded later. Payment also connotes the extinguishment of liability either in whole or in part. There can be no extinguishment of liability in the case at bar in view of the provisions for refund.

The word “Payment” is defined in *Corpus Juris*, Vol. 48, p. 585, as follows:—

30 “As used in its ordinary legal sense, payment involves an actual or constructive delivery by a debtor or some one for him to his creditor or some other person authorized to receive it of money or something accepted by the creditor as the equivalent thereof, with the intention or purpose on the part of the payor or transferor to extinguish a debt or obligation in whole or in part and its acceptance by the creditor for the same purpose.”

Miron v. McCabe, 1867, 4 P.R. (Ont.) 171 per Adam Wilson J. p. 174,—

“A payment is a sum expressly applicable in reduction of the particular demand on which it is made; that demand is therefore reduced by the extent of the payment. To constitute a payment the transaction must have the assent of both parties; and for such payment no action is maintainable.”

40 In the case at bar an action would be maintainable by the settler against the Dominion Government for refund of timber dues on the patent being issued.

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Section 4 of the English Debtors Act, 1869, provided that after the passing of that Act, no person should be arrested or imprisoned for making default “in payment of a sum of money.”

In *Bates v. Bates*, 1888, 14 P.D. 17; 1889, 58 L.J.P. 85 an order of attachment was sought against a husband who had failed to obey an Order of the Court requiring him to pay into Court £40 to cover the estimated costs of the plaintiff wife or to give a bond therefor. It was held that the payment required by the Order was not “payment of a sum of money” under the Debtors Act. At p. 20 (P.D.) Lindley L.J. said:—

“The question turns upon the words of the 4th section of the 10
Debtors Act. It is said that the Appellant is within the protection of the Act, because he has made default in payment of a sum of money. But what do the words ‘payment of money’ in this section mean? In my opinion they do not mean depositing a sum of money in Court to abide an order to be subsequently made. If the Appellant had been ordered to pay the money to the receiver of the Court in discharge of an obligation to which he had been declared liable, that might be different.”

The reasoning of Lord Justice Lindley in this case seems to apply with equal force to the case at bar. 20

See also *Hutchinson v. Hartmont*, 1877, W.N. 29.

It would seem from the authorities that the word “payment” is at best an equivocal expression and that its true meaning in any particular case must be arrived at from an examination of the particular transaction involved. It is submitted that the payment of timber dues by settlers conditioned upon refund in the event of patent being issued is not a payment within the meaning of the Agreement, nor is there any indication in the Agreement that the word was used in such an extensive or all-embracing sense as to include conditional payments of this kind.

The second contention of the Province dealing with section 2 of the 30
Agreement is that even assuming the word “payment” includes a payment conditional upon refund the payments in question were not made “in respect of any interest in the said lands.” Under Regulation 47 (f) above quoted the settlers were required to obtain a permit to cut timber for sale and to pay dues only on the timber sold to other than actual settlers. The dues were therefore paid in respect of cut timber only when sold to other than actual settlers. Property in cut timber does not constitute an interest in land and dues payable on the sale of cut timber are payable in respect of a chattel interest and not an interest in land.

As to section 3 of the Agreement the same argument applies. This 40
section obliges the Province to carry out ever contract to purchase or lease any interest in any of the lands transferred. As the obligation to refund timber dues arises in respect of dues paid on cut timber only it cannot be said to have reference to an interest in land in any way whatsoever.

Furthermore, the matter of the retention of payments having been specifically dealt with in section 2, it is submitted that no argument can be based upon section 3 dealing with the same point.

“ Expressio unius est exclusio alterius ” Co. Litt. 210a.

Beal's Cardinal Rules of Interpretation 3rd Ed. p. 140.

10 Applications for homestead entries were made under Regulations relating to Dominion lands as such. These Regulations in force at the time the Agreement was entered into contain no reference whatever to the cutting of timber under any circumstances requiring the payment of dues. The latter are dealt with in separate Regulations governing the cutting of timber on Dominion lands, referred to above. In the last mentioned Regulations the cutting of timber by homestead entrants is dealt with in conjunction with the general subject of cutting timber on all Dominion lands. The rights and liabilities of a homestead entrant to pay dues on cut timber under one set of regulations are quite distinct from his rights to obtain a patent on his land under a totally different set of regulations. Section 3 deals only with the rights of the homestead entrant in respect of the land and not the cut timber. It is accordingly submitted that section 3 has no reference whatever to the subject of timber dues.

20 The Province contends therefore that the first question should be so answered as to fix the obligation to refund dues as an obligation of the Dominion; and the answer to the second question should be in the negative.

EDMUND F. NEWCOMBE,

ERIC PEPLER,

of Counsel for the Province
of British Columbia.

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PART I.

STATEMENT OF CASE.

30

1. By Order of His Excellency the Governor General in Council, dated 4th May, 1933 (P.C. 833), (Record, pp. 3, 4 and 5, ls. 1-29), the following questions arising upon the interpretation of the provisions of the several Agreements for the transfer of the natural resources to the Provinces of Manitoba, Saskatchewan, and Alberta, and of the Railway Belt and Peace River Block to the Province of British Columbia, were referred to the Supreme Court of Canada for hearing and consideration pursuant to section 55 of the Supreme Court Act:

40 (a) Under the terms of the several Agreements aforementioned,
is the obligation to refund dues, pursuant to the terms of paragraph (f)

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of section 47 of the Timber Regulations, in the cases aforementioned, an obligation of the Dominion or of the respective Provinces ?

(b) If the obligation be that of the Dominion, is the Dominion entitled to be recouped by the Provinces respectively, the amount of the dues so refunded ?

2. By the British North America Act, 1930 (Record, pp. 84-85), the several Agreements set out in the Schedule thereto, being,

(a) Agreements for the transfer of the natural resources to the Provinces of Manitoba, Alberta and Saskatchewan, respectively dated in the case of the first two mentioned Agreements December 14, 1929, and in the case of the last mentioned Agreement March 20, 1930, and

(b) an Agreement for the re-transfer of the Railway Belt and Peace River Block to the Province of British Columbia, dated February 20, 1930,

were thereby confirmed and given "the force of law notwithstanding anything in the British North America Act, 1867, or any Act amending the same, or any Act of Parliament of Canada, or in any Order in Council, or terms or conditions of union made or approved under any such Act as aforesaid."

The said Agreements came into force, in virtue of their own terms, or (in the case of Alberta and Saskatchewan) of Supplementary Agreements varying such terms, on the following dates respectively :—

The Agreements with Manitoba, on July 15, 1930 (Record, p. 53, l. 10, to p. 61, l. 13).

The Agreement with British Columbia, on August 1, 1930, (Record, pp. 69-75).

The Agreements with Saskatchewan and Alberta, on October 1, 1930 (Record, pp. 76-83 and pp. 61-68).

Each such date may, for purposes of discussion, be conveniently referred to as "the effective date" of the several Agreements respectively.

3. The regulations governing the granting of yearly licences and permits to cut timber on Dominion lands in the Provinces of Manitoba, Saskatchewan and Alberta, and within the Railway Belt and Peace River Block in the Province of British Columbia (hereinafter referred to as the Dominion Timber Regulations) were established by Order in Council of March 26, 1924, passed under the authority of section 57 of the Dominion Lands Act, R.S.C. 1927, chap. 113 and duly published in the *Canada Gazette* of April 26, 1924 (Vol. 57, No. 43) for the fourth consecutive week pursuant to section 75 of the said Act, and validated in respect of non-compliance with the requirements of that section touching their approval by Parliament by chap. 44 of the Statutes of Canada of 1928.

Paragraphs (e) and (f) of section 47 of the said regulations, provide as follows:—

10 “(e) Any holder of an entry for a homestead, a purchased homestead or a pre-emption, who, previous to the issue of letters patent, sells any of the timber on his homestead, purchased homestead or pre-emption, to owners of sawmills or to any others without having previously obtained permission to do so from the Minister, is guilty of a trespass and may be prosecuted therefor before a justice of the peace and, upon summary conviction, shall be liable to a penalty not exceeding one hundred dollars, and the timber so sold shall be subject to seizure and confiscation in the manner provided in the Dominion Lands Act.

“ (f) If the holder of an entry as above described desires to cut timber on the land held by him, for sale to either actual settlers for their own use or to other than the actual settlers, he shall be required to secure a permit from the Crown timber agent in whose district the land is situated, and shall pay dues on the timber sold to other than actual settlers at the rate set out in section 42 of these regulations, but the amount so paid shall be refunded when he secures his patent.”

20 4. Prior to the coming into force of the several Agreements aforementioned, permits to cut timber were (as is stated in the narrative of the Order in Council cited in paragraph 1 above: Record p. 4, l. 28, to p. 5, l. 15) granted to entrants for homesteads within the several Western Provinces, and dues were paid to the Dominion Government in respect of the timber to be cut under such permits, pursuant to the terms of paragraph (f) of section 47 of the Dominion Timber Regulations upon the stipulation and assurance to the permittee in terms expressed by the said regulation that “ the amount so paid shall be refunded when he secures his patent.”

30 Many of the permits so granted were outstanding and in force when the said Agreements became effective. A large number of the holders of the said permits subsequently became entitled to and received patents for their lands, and, having thus become entitled to a refund of the dues which they had paid under the terms of paragraph (f) of section 47 of the said regulations, made application for such refund of dues to either the Provincial Government concerned or to the Dominion Government. Thereupon a question arose between the Dominion Government and the Government of each of the Provinces aforementioned whether the obligation to make the refund of the dues above mentioned is, under the terms of the several Agreements, an obligation of the Provincial Governments respectively, or of the Dominion
40 Government. The object of the present reference is to obtain a judicial determination of this question.

PART II.

CONTENTION OF THE ATTORNEY-GENERAL OF CANADA.

5. The Attorney-General of Canada will contend, for the reasons hereinafter set forth, that upon the true interpretation of each of the said Agreements, question (a) ought to be answered by stating that, “ The obligation

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to refund such dues is an obligation of the Provinces respectively ”; and if that question be so answered, no answer to question (b) will be necessary. Alternatively, if the Court should be of opinion that the correct answer to question (a) is, “ The obligation to refund such dues is an obligation of the Dominion,” then the Attorney-General of Canada will contend that question (b) ought to be answered in the affirmative.

PART III.

ARGUMENT.

6. The declared and controlling object of each of the Agreements entered into with the Provinces of Manitoba, Saskatchewan and Alberta, was to place each of these Provinces “ in a position of equality with the other Provinces of Confederation with respect to the administration and control of its natural resources as from its entrance into Confederation.” (Record, p. 62, ll. 1-4; p. 76, ll. 28-31; p. 54, ll. 5-31 and ll. 34-36.) 10

7. To that end, each Agreement transfers to the Province, except as otherwise therein expressly provided, the interest of the Crown in all Crown lands, mines, minerals and royalties derived therefrom within the Province, and all sums due or payable for such lands, mines, minerals and royalties, subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same. (Record, p. 62, ll. 9-29; p. 77, ll. 10-20; p. 63, ll. 32-39.) 20

8. To that end, also, financial adjustments are required to be made, in favour of each Province, by the Dominion in respect of its alienations of the Crown lands, etc., and interests therein during the period which intervened between the entrance of each Province into Confederation and the effective date of the Agreement.

In the case of Manitoba, these adjustments were determined by a Royal Commission (after conducting an elaborate inquiry in which all payments received by the Dominion in respect of such dispositions of Crown lands, etc., after July 15, 1870, were necessarily brought into account : Record, p. 54, ll. 5-31) before the Agreement with that Province was made. Clauses 20 and 21 of the Agreement, which gave effect to the findings of the Commission, provide for the payment by the Dominion to the Province of (1) an increased annual subsidy, based upon the population of the Province as from time to time ascertained by the quinquennial census thereof, to be paid in perpetuity (Record, p. 59, ll. 28-42) and (2) a lump sum of \$4,584,412.29, with interest thereon, to be paid forthwith after the coming into force of the Agreement. (Record, p. 60, ll. 7-17.) 30

9. In the case of Alberta and Saskatchewan, a similar inquiry is to be conducted by a Royal Commission, pursuant to the terms of clause 22 of the Agreement with Alberta (Record, p. 67, ll. 21-40) and of clause 24 of the Agreement with Saskatchewan (Record, p. 82, ll. 22-39). The inquiry, in the case of each of these Provinces, will be limited to an inquiry as to the financial adjustments (if any) (in addition to the annual subsidy to be paid 40

by the Dominion to the Province, under clauses 20 and 21 of those Agreements respectively: Record, p. 67, ll. 2-15; p. 81, l. 42 to p. 82, l. 5) which ought to be made in favour of the Province in respect of interests in Crown lands, mines, minerals and royalties within the Province disposed of by the Dominion during the interval between September 1, 1905 (when the said Provinces were established) and August 1, 1930 (Record, p. 67, ll. 21-40; p. 82, ll. 22-30), it having been decided that, in respect of dispositions of such lands, etc., made prior to September 1, 1905, the Dominion was under no liability to account to the Province: *In re Transfer of Natural Resources to the Province of Saskatchewan* [1932], A.C. 28.

10 10. The Agreement with British Columbia provides, in accordance with the recommendations of a Royal Commission (Record, p. 69, l. 34 to p. 70, l. 3), for the re-transfer to the Province of all and every interest of Canada in the lands, within the tracts known as the Railway Belt and Peace River Block, and for the continued payment by the Dominion to the Province, notwithstanding such re-transfer, of the annual sum of \$100,000 which, under the terms of paragraph 11 of the terms of the Union between Canada and that Province, Canada had undertaken to pay to the Province in consideration of the lands to be conveyed in aid of the construction of the Canadian Pacific
20 Railway (Record, p. 70, ll. 9-17; p. 74, ll. 6-10). The Royal Commissioner reported that, when this re-conveyance had been made, British Columbia would be placed in a position of equality with the other Provinces in respect of the cost of the construction of the said railway.

11. Since the cardinal purpose of the Agreements and (it must be assumed) their effect is to place each Province, by the methods and means aforementioned (when these have been fully executed), in the same position with respect to the administration and control of its natural resources as it would have been in, if it had had the beneficial administration and control of such resources as from the date of its entrance into Confederation, it would
30 seem to follow, on principle (even if the Agreements were silent upon the point), that unexecuted contracts and arrangements affecting the Crown lands or interests therein, within the Province, entered into by the Dominion prior to the effective date of each Agreement, ought now to be taken and treated as if they had been made by the Province itself. *Restitutio in integrum*, so far as money can do it, the Agreements provide for, on the basis of the principle above stated. That being the case, does not equity manifestly require the Province to take the benefit of the transaction *cum onere*—that is to say, subject, as regards the lands transferred, to all the equalities by which the Dominion was bound or affected in relation to
40 them? (See, e.g., Dart on Vendors & Purchasers, Vol. 2, 746-747.

12. How does the matter stand upon the terms of the Agreements? The subject-matter of the Agreements is clearly of "a high political nature," involving as it does "the attribution of royal territorial rights, for purposes of revenue and government, to the Provinces in which they are situate or arise." (*Attorney-General of Ontario v. Mercer*, 8 A.C. 767, 778.) Moreover, having been given the force of law notwithstanding anything in the British

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North America Act, 1867, or any Act amending the same, the said Agreements are constitutional enactments, and, as such, ought to be construed and expounded in a large, liberal and comprehensive spirit: *Edwards v. Attorney-General of Canada* [1930] A.C. 124, 127, bearing in mind, with respect to each Agreement that, “that must be the truest exposition which best harmonizes with its design, its objects and its general structure”: Story on the Constitution, 4th ed., Vol. I, p. 337.

The material provisions of the Agreements are clauses 1 and 2 of the Agreement with Manitoba, (Record, p. 54, l. 34 to p. 55, l. 16) and the corresponding clauses of the other Agreements which are framed substantially in identic terms. (Record, p. 70, ll. 9-30; p. 70, ll. 40-45; p. 62, ll. 9-39; p. 77, ll. 10-40.) Said clauses 1 and 2 read as follows:— 10

“ 1. *In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of section one hundred and nine of the British North America Act, 1867, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Province, and all sums due or payable for such lands, mines, minerals or royalties, shall, from and after the coming into force of this agreement, and subject as therein otherwise provided, belong to the Province, subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same, and the said lands, mines, minerals and royalties shall be administered by the Province for the purposes thereof, subject, until the Legislature of the Province otherwise provides, to the provisions of any Act of the Parliament of Canada relating to such administration; any payment received by Canada in respect of any such lands, mines, minerals or royalties before the coming into force of this agreement shall continue to belong to Canada whether paid in advance or otherwise, the intention that, except as herein otherwise specially provided, Canada shall not be liable to account to the Province for any payment made in respect of any of the said lands, mines, minerals or royalties before the coming into force of this agreement, and that the Province shall not be liable to account to Canada for any such payment made thereafter.* 20 30

2. The Province will carry out in accordance with the terms thereof every contract to purchase or lease any Crown lands, mines or minerals and *every other arrangement whereby any person has become entitled to any interest therein as against the Crown*, and further agrees not to affect or alter any term of any such contract to purchase, lease or other arrangement by legislation or otherwise, except either with the consent of all the parties thereto other than Canada or in so far as any legislation may apply generally to all similar agreements relating to lands, mines or minerals in the Province or to interests therein, irrespective of who may be the parties thereto.” 40

13. The Attorney-General of Canada submits that the first part of clause I had effect to transfer to the Province (except as otherwise in terms provided) the interest of the Crown in, inter alia, all Crown lands within the Province and all sums due or payable for such lands "subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same"; and that the right of homestead entrants to cut timber on their homestead lands within the Province for purposes of sale, under permits granted pursuant to paragraph (f) of section 47 of the Dominion Timber Regulations and in force at the effective date of the Agreement, affected such lands with a "trust" and constituted an "interest other than that of the Crown in the same," within the meaning of that clause: *Attorney-General for Canada v. Attorney-General for Ontario*, [1897] A.C. 199, 210; *The Province of Ontario v. Dominion of Canada* [1897] 28 S.C.R. 609, 820; *Booth v. McIntyre* (1880), 31 Ont. C.P. 183, 193, 194; *Mowatt v. Casgrain*, (1896) R.J.Q. 6 Q.B. 12.

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14. The Attorney-General of Canada submits that the latter part of clause I had effect to establish a "dead-line" division of the proceeds of the beneficial administration of such lands, or of any interest therein, by giving the Dominion the right to retain all payments received in respect thereof before the effective date of the Agreement, whether paid in advance or otherwise, without liability to account therefor to the Province, on the one hand, and by giving the Province, on the other hand, the right to receive and retain all payments made in respect of such lands or interests therein after that date.

In the light of clauses 20 and 22 of the Agreement (Record, p. 59, l. 28 to p. 60, l. 17), and of the corresponding clauses of the other Agreements (Record, p. 67, ll. 1-40; p. 81, l. 42 to p. 82, l. 11)—to which the latter part of clause 1 may be considered complementary—it was just and reasonable that the Dominion should not be required (otherwise than as specially provided by those clauses) to account to the Province for any payments received in respect of dispositions of Crown lands and interests therein, prior to the effective date of the Agreement; and it is submitted that the plain intent and effect of the latter part of clause 1 is to so declare and to bar any claim which the Province might otherwise have been in a position to assert against the Dominion in respect of such payments.

15. The Attorney-General of Canada further submits that clause 2 of the Agreement, and the corresponding provisions of the other Agreements, had effect, from and after the effective date thereof, to require the Province, in the room and stead of the Dominion, to perform and discharge all unexecuted obligations and liabilities of the Dominion towards third persons under the terms of "every contract to purchase, or lease any Crown lands, mines, or minerals, and every other arrangement whereby any person has become entitled to any interest therein as against the Crown." In other words, the said clause had effect, *proprio vigore*, to effect a novation, by substituting the Province for the Dominion as the obligor or debtor under every such contract or arrangement.

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No other construction would, it is submitted, be reasonable or consistent, seeing that by the terms of this Agreement,

(1) The Dominion divested itself of beneficial title to such lands and to that extent of the means to carry out such contracts and arrangements;

(2) The Dominion undertook to compensate the Province in respect of interests in such lands, etc., disposed of by the Dominion during the period which intervened between the entrance of the Province into Confederation and the effective date of the Agreement;

(3) The Province was empowered to modify or alter the terms of such contracts or arrangements by legislation of general application; and 10

(4) The Province became entitled to receive, after the effective date of the Agreement, all sums of money then due or payable in respect of interests in such lands, etc., which had been disposed of by the Dominion.

In support of this submission, the Attorney-General of Canada relies on the judgment of the Court of Appeal for Alberta in *Spooner Oils Limited v. Turner Valley Conservation Board* (1932) 3 W.W.R. 477, 501, where McGillivray, J.A., delivering the judgment of the Court, expressed the following opinion with regard to the meaning and effect of clause 2 of the Agreement:— 20

“ In my opinion the intention of the law making bodies concerned has been expressed in sec. 2 of the agreement in language capable of only one meaning, namely, that subject to the exceptions by way of consent or by way of legislation which is of such a general character as to preclude discrimination, the province takes the place of the Dominion under the contracts and arrangements that the Dominion has made and undertakes to carry out such contracts and arrangements in accordance with the terms thereof.” 30

16. The Attorney-General of Canada further submits that permits, granted under the terms of paragraph (f) of section 47 of the Dominion Timber Regulations and in force at the effective date of the Agreement, come within the connotation of the words “ every other arrangement whereby any person has become entitled to any interest therein (i.e. Crown lands transferred) as against the Crown ”; that the right of the permittee under the terms of the said regulation to obtain a refund of dues paid upon securing a patent for his homestead was a term of every such “ arrangement,” and that the Province is, therefore, under an obligation, in virtue of the terms of clause 2 of the Agreement to refund the dues paid under such permits as and when the permittees secured patents for their homestead lands. The term “ arrangement ” is “ a very wide and indefinite one: (*Manning v. Eastern Counties Railway Company*, 12 M. & W. 237, 253, per Baron Parke); correspondingly, the term “ interest ” is one of extreme elasticity. “ *Ex vi termini*, in legal understanding, it (“ interest ”) extendeth to estates, rights 40

and titles, that a man hath of, in, to, or out of lands; for he is truly said to have an interest in them": (Co. on Litt. 345 (a); 10 Halsbury, Laws of England, 472, note (j); 33 Corpus Juris, pp. 261, 262); and the expression "interest in land", unless there be something to restrict the meaning, must include equitable as well as legal interests: (*Williams v. Papworth* [1900] A.C. 563, 568, per Lord Macnaghten). Under the Statute of Frauds and the Statutes of Mortmain, and similar statutes, an interest in the proceeds of sale of land have been held to be an interest in the lands themselves (*Province of Ontario v. Dominion of Canada*, 25 S.C.R. 434, 536, per Sedgewick, J. and cases cited). In their present context, and having regard to the object and scope of the Agreement, these terms must, it is submitted, have been intended to have, and ought to be construed as having the broadest meaning of which they are capable. The Dominion Lands Act, the Irrigation Act, the Dominion Waterpower Act, and the Forest Reserves and Parks Act, and the regulations made under these Acts, afforded authority for, (and the Provinces at least constructive notice of the possible existence of), a wide variety of commitments affecting interests in Crown lands not originating in, or depending upon, positive contracts or agreements, e.g., homestead entries, appropriation and reservations of lands for various objects, licences of timber berths and of lands for waterpower and other purposes, rights to the use of water, etc.; and it is not, therefore, unreasonable to assume that the words of clause 2 of the Agreement were intended to be wide enough to secure the due performance by the Province of unexecuted obligations of the Dominion under existing commitments of the various possible categories.

17. Permits to cut timber, granted under paragraph (f) of sec. 47 of the Dominion Timber Regulations, were granted to "any holder of an entry for a homestead" and because the applicant was a person fulfilling that character. (1). The true nature of the right conferred by such a permit cannot, it is submitted, be properly determined without reference to the character of the interest which an entrant obtained in his homestead, and to the rights and limitations attached to the same. The law gave a person who had perfected an entry for an homestead the right "to take, occupy, use and cultivate the land entered for and hold possession thereof to the exclusion of any other person, and to bring and maintain actions for trespass committed on the said land"; subject, however, to the proviso that "occupancy, use and possession of land entered for as a homestead shall be subject to the provisions of this Act, or of any other Act affecting it, or of any regulations made thereunder": Dominion Lands Act, sec. 11, sub-sec. 2. Such an entry has effect, in law, as a demise of the land itself: (*Glenwood Lumber Co. v. Phillips*, [1904] A.C. 405, 408, 409; *Macpherson v. Temiskaming Lumber Co.* [1913] A.C. 145, 152, 153).

Until the entrant has duly performed the prescribed requirements in regard to residence and cultivation, etc., (see sec. 16 of the Dominion Lands

(1) The regulation also extended to the holders of entries for purchased homesteads and pre-emptions, but, the privilege of such entries having been withdrawn in 1918 (Statutes of Canada, 1918, chap. 19, sec. 28) the position of such entrants need not be considered.

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Act), and secured a patent, the legal title to the land remains in the Crown, but, as against all except the Crown, the entrant becomes the lawful possessor, clothed with what has been described under an analogous statute as “an inceptive title”, sufficient as against third parties to support suits in equity or at law: (*Knapp v. Alexander-Edgar Lumber Company*, 237 U.S. 162, 166, 167), and giving him an equitable interest in the land: (*Sturr v. Beck*, 133 U.S. 541). Obviously the entrant’s privilege of settling on the land would be ineffectual if he had not also the right to build himself a house, outbuildings, and fences, and to clear the land for cultivation. And so it is clearly implied and contemplated by sec. 50 of the Dominion Timber Regulations that an entrant shall be entitled (acting of course, *bona fide* and in the course of good husbandry) to cut and use standing timber on his homestead for such purposes. His privileges, in this regard are said to be analogous to those of a tenant for life impeachable for waste: (*Shiver v. U.S.* 159 U.S. 492, 497; *Drake v. Wigle*, 24 U.C.C.P. 405; *Saunders v. Breakie*, 5 O.R. 603; *Hixon v. Reaveley*, (1905) 9 O.L.R. 6, 7; 40 Cyc. 508). At Common law standing trees are considered as *partes soli* and parcel of the inheritance, i.e., as part of the land itself as distinguished from the fruits of the land; and if a tenant for life impeachable for waste cut timber on the estate for sale, the property in the trees so severed vested, at once on severance, in the owner of the first estate or inheritance, *in esse*, whether in fee or in tail: (White and Tudor’s Leading Cases in Equity, 9th ed., Vol. 2, p. 933, 956; *Uvedall v. Uvedall*, 2 Roll, Abr. 119; *Whitfield v. Bewett*, 2 P. Wms. 240; *Bewick v. Whitfield*, 3 P. Wms. 267; *Lewis Bowles Case*, 11 Co. 79b); *Liford’s Case*, 11 Co. 46b; *Herlakenden’s Case*, 4 Co. 62a). The reason for this is “that the lessee had them but as things annexed to the soil; and, therefore, it would be absurd in reason that when by his act and wrong he severs them from the land, that he should gain a greater property in them than he had by the demise”: *Lewis Bowles Case*, supra, at p. 81b.

Paragraph (b) of sec. 47 of the Dominion Timber Regulations restricts the rights of an entrant as a tenant, in his homestead lands, in the same way as impeachment for waste restricts the rights of a life tenant. He is not at liberty to cut timber for purposes of sale without a permit in that behalf. If he does so, without a permit (which para. (f) of sec. 47 requires him to obtain) he commits a trespass, and is subject to a penalty, and the timber so sold is subject to seizure and confiscation.

The form of permit issued under paragraph (f) of sec. 47 authorized the entrant, as permittee, “to cut and take for his own use or for the purpose of barter or sale” from his homestead lands as described therein, a specified quantity of timber; and it is submitted that the permit thus had effect simply to add to the homestead entrant’s existing interest, as a tenant, in his homestead lands a particular interest or property in the standing timber thereon *quoad* the cutting of the quantity thereof specified in the permit for purposes of sale, and therefore constituted an “arrangement” entitling the entrant to an “interest in Crown lands” within the meaning of clause 2 of the Agreement.

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brought into account) on the credit side for the Dominion in the determination of the financial adjustment to be made by the Dominion in favour of each Province in respect of alienations of Crown lands and interests therein made after the entrance of the Province into Confederation, just as, on the other hand, the sums of money which the Dominion has received in respect of such alienations would be brought into account on the debit side against the Dominion. The latter would include the dues paid by homestead entrants under permits granted under paragraph (f) of sec. 47 of the Dominion Timber Regulations. It is submitted that the Dominion should not be required, by being obliged to pay the refunds of dues to which permittees have or may become entitled under the terms of that regulation, to account twice for the moneys so received. The total sum of money involved cannot, in the nature of this case, be stated with certainty, but it may be safely assumed that it is inconsiderable in comparison with the sums of money on account of outstanding indebtedness on timber berth accounts alone which the Provinces became entitled to collect. 10

CHARLES P. PLAXTON.

APPENDIX.

Extracts from Regulations governing the granting of yearly licences and permits to cut timber on Dominion lands in Manitoba, Saskatchewan, Alberta, within twenty miles on either side of the Canadian Pacific Railway in the Province of British Columbia, and the tract of three and one-half million acres controlled by the Government of the Dominion in the Peace River district in the Province of British Columbia. 20

Approved by Order-in-Council of the 26th March, 1924, and subsequent amending Orders-in-Council.

* * * * *

50. Any homestead settler having no timber on his homestead or lands owned by him that could be used to meet his requirements, and who has not obtained a free allowance of timber from Dominion lands, may, providing application is made within five years of date of his homestead entry, obtain a permit to cut such quantity of building and fencing timber and dry fuel as he may require for use on his homestead, not exceeding the following: 30

(a) Three thousand lineal feet of building timber, no log to be over 12 inches at the butt end unless the timber is cut from dry trees, in which case timber of any diameter may be taken.

Should the building timber be sawn at a mill, the permittee will be entitled to receive, free of dues, 9,250 feet board measure of lumber therefrom, and no more. 40

(b) Four hundred roof poles to be used for such purpose.

(c) Five hundred fence posts 7 feet long, and not to exceed 5 inches at the small end.

(d) Two thousand fence rails.

51. Should the house timber be sawn at a mill, payment for sawing must not be made by way of toll, as the full quantity of lumber cut from the logs must be used on the permit holder's homestead.

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52. Any settler in Manitoba, Saskatchewan or Alberta, who has lost his dwelling or other building by accidental fire, whether caused by prairie or bush fires or in any other way not due to his own carelessness, may obtain a free permit to cut, for the replacing of such building, the quantity of timber to which a homesteader is entitled free of dues under the provisions of section 50 of these regulations.

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* * * * *

10 54. The applicant will be required to pay an office fee of one dollar before he can obtain a free permit, but no dues will be charged for the timber or wood cut under and in accordance therewith.

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Formal Judgment.

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IN THE SUPREME COURT OF CANADA.

Tuesday, the 3rd day of October, A.D. 1933.

Present :

- THE RIGHT HONOURABLE LYMAN POORE DUFF, P.C., C.J.C.
- THE HONOURABLE THIBAUDEAU RINFRET, J.
- 20 THE HONOURABLE JOHN HENDERSON LAMONT, J.
- THE HONOURABLE ROBERT SMITH, J.
- THE HONOURABLE LAWRENCE A. D. CANNON, J.
- THE HONOURABLE OSWALD SMITH CROCKET, J.
- THE HONOURABLE FRANK JOSEPH HUGHES, J.

IN THE MATTER of a Reference by His Excellency the Governor in Council to the Supreme Court of Canada, concerning Refunds of Dues paid under the terms of Section 47 (f) of the Timber Regulations, in Manitoba, British Columbia, Saskatchewan and Alberta.

30 WHEREAS by Order in Council of His Majesty's Privy Council for Canada, bearing date the fourth day of May, in the year of our Lord, one thousand nine hundred and thirty-three (P.C. 833), the questions of law hereinafter set out, arising upon the interpretation of the provisions of the several Agreements for the transfer of the natural resources to the Provinces of Manitoba, Saskatchewan and Alberta, and of the Railway Belt and Peace River Block to the Province of British Columbia, were referred to the Supreme Court of Canada, for hearing and consideration,

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pursuant to the authority conferred by Section 55 of the Supreme Court Act, Revised Statutes of Canada, 1927, chapter 35 :—

(a) Under the terms of the several Agreements aforementioned, is the obligation to refund dues, pursuant to the terms of paragraph (f) of section 47 of the Timber Regulations, in the cases of aforementioned, an obligation of the Dominion or of the respective provinces ?

(b) If the obligation be that of the Dominion, is the Dominion entitled to be recouped by the provinces respectively, the amount of the dues so refunded ?

10

AND WHEREAS the said questions came before this Court for hearing and consideration on the twenty-ninth and thirtieth days of May, in the year of our Lord, one thousand nine hundred and thirty-three, in the presence of Counsel for the Attorney-General of Canada, and Counsel for the Attorney-General of British Columbia, Counsel for the Attorney-General of Alberta, Counsel for the Attorney-General of Manitoba, and Counsel for the Attorney-General of Saskatchewan ;

WHEREUPON and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said Reference should stand over for consideration, and the same having come on this day for determination, the Court hereby certifies to His Excellency the Governor-General in Council, for his information, pursuant to sub-section 2 of section 55 of the Supreme Court Act, that the Court unanimously answers the questions as follows :—

To the Interrogatory (a) : The said obligation is an obligation of the respective provinces.

To the Interrogatory (b) : In view of the answer to Interrogatory (a), this question does not arise ; but, if our view had been that the provinces were not under a direct obligation to refund, we should have considered that the Dominion, on refunding such dues, would be entitled to recoupment from the province concerned,

and that the reasons for such answers are to be found in the reasons for judgment, written by the Chief Justice and concurred in by the other members of the Court, a copy of which is hereunto annexed.

J. F. SMELLIE,
Registrar.

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Reasons for Judgment of Sir L. P. Duff, C.J.

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DUFF, C.J. (Concurred in by Rinfret, Lamont, Smith, Cannon, Crocket, and Hughes JJ.)—Our opinion is required touching matters involved in questions addressed to us by His Excellency the Governor in Council, in an order dated the 4th of May, 1933. These interrogatories concern the scope of a stipulation found in agreements between the Dominion of Canada and the provinces, British Columbia, Manitoba, Alberta and Saskatchewan, respectively. They are in these terms :

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10 “(a) Under the terms of the several Agreements aforementioned, is the obligation to refund dues, pursuant to the terms of paragraph (f) of section 47 of the Timber Regulations, in the cases aforementioned, an obligation of the Dominion or of the respective Provinces ?

 “(b) If the obligation be that of the Dominion, is the Dominion entitled to be recouped by the Provinces respectively, the amount of the dues so refunded ?”

20 The general effect of the agreements, with Alberta (October 1, 1930), with Saskatchewan (October 1, 1930), and with Manitoba (July 15, 1930), is to provide for the transfer of the lands, mines and minerals of the Crown in the right of the Dominion, in these several provinces, to the provinces in which they are situate. The agreement with British Columbia provides for the re-transfer to the province of the Crown lands, mines and minerals in the areas known respectively as the Railway Belt and the Peace River Block.

30 The precise issue is whether or not the provinces severally assumed, by these agreements, an obligation to repay moneys received by the Dominion, as dues in respect of timber permits granted to entrants in occupation of homesteads, under regulations professedly promulgated under the *Dominion Lands Act*. The regulation which gives rise to the obligation to repay is no. 47 (f). We quote it textually, as well as no. 47 (e) :

40 “(e) Any holder of an entry for a homestead, a purchased homestead or a pre-emption, who, previous to the issue of letters patent, sells any of the timber on his homestead, purchased homestead or pre-emption, to owners of saw-mills or to any others without having previously obtained permission to do so from the Minister, is guilty of a trespass and may be prosecuted therefor before a justice of the peace and, upon summary conviction, shall be liable to a penalty not exceeding one hundred dollars, and the timber so sold shall be subject to seizure and confiscation in the manner provided in the *Dominion Lands Act*.

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“(f) If the holder of an entry as above described desires to cut timber on the land held by him, for sale to either actual settlers for their own use or to other than actual settlers, he shall be required to secure a permit from the Crown timber agent in whose district the land is situated, and shall pay dues on the timber sold to other than actual settlers at the rate set out in section 42 of these regulations, but the amount so paid shall be refunded when he secures his patent.”

The articles of the several agreements in virtue of which, in the view of the Dominion, the provinces have assumed the repayment provided for in regulation 47 (f) are (we quote clauses 1 and 2 of the Manitoba agreement which, admittedly, are in substantially identical terms with the cognate clauses of the other agreements):

“1. In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of section one hundred and nine of the *British North America Act, 1867*, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Province, and all sums due or payable for such lands, mines, minerals or royalties, shall, from and after the coming into force of this agreement, and subject as therein otherwise provided, belong to the Province, subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same and the said lands, mines, minerals and royalties shall be administered by the Province for the purposes thereof, subject, until the Legislature of the Province otherwise provides, to the provisions of any Act of the Parliament of Canada relating to such administration; any payment received by Canada in respect of any such lands, mines, minerals or royalties before the coming into force of this agreement shall continue to belong to Canada whether paid in advance or otherwise, it being the intention that, except as herein otherwise specially provided, Canada shall not be liable to account to the Province for any payment made in respect of any of the said lands, mines, minerals or royalties before the coming into force of this agreement, and that the Province shall not be liable to account to Canada for any such payment made thereafter.

“2. The Province will carry out in accordance with the terms thereof every contract to purchase or lease any Crown lands, mines or minerals and every other arrangement whereby any person has become entitled to any interest therein as against the Crown, and further agrees not to affect or alter any term of any such contract to purchase, lease or other arrangement by legislation or otherwise, except either with the consent of all the parties thereto other than Canada or in so far as any legislation may apply generally to all similar agreements relating to lands, mines or minerals in the Province or to interests therein, irrespective of who may be the parties thereto.”

These clauses must, of course, be read together, and in light of the objects of the compacts as disclosed by their recitals, their provisions as a whole, and the circumstances all parties had in view in concluding them; but the matter in controversy may fairly be stated thus: Is the obligation to repay a term of an "arrangement" under which "any person became entitled to an interest" (within the meaning of these clauses) in any "Crown lands * * * as against the Crown"? The Dominion contends that the obligation is a term of an "arrangement" creating such an "interest" in one or both of these senses: first, as one of the terms
 10 under which the entrant acquired and held his homestead; and, second, as a term of the "arrangement" under which the entrant obtained a permit to cut timber under regulation 47 (f).

By the *Dominion Lands Act* (s. 2 (h)) "homestead" is defined thus:

" 'homestead' means the land entered for under the provisions of this Act or of any previous Act relating to Dominion lands for which a grant from the Crown may be secured through compliance with the conditions in that respect prescribed at the time the land was entered for."

But this definition does not, of course, exhaustively describe the entrant's
 20 rights in relation to his homestead. The statute declares (s. 8) that lands of the character described in the section are open for homestead entry; it provides for application for entry (s. 11); and by subsection 2 of the last mentioned section it is enacted:

" 2. When application is so made for land then open to homestead entry, the local agent or officer acting for him shall accept it upon payment of the said fee and shall give the receipt hereinafter provided for; and the acceptance by the local agent, or the officer acting for him, of the said application and of the fee shall constitute entry, and the receipt given to the applicant in form D
 30 shall be a certificate of entry and shall entitle the recipient to take, occupy, use and cultivate the land entered for, and to hold possession thereof to the exclusion of any other person, and to bring and maintain actions for trespass committed on the said land; and the land shall not be liable to be taken in execution before the issue of letters patent therefor: Provided that occupancy, use and possession of land entered for as a homestead, shall be subject to the provisions of this Act or of any other Act affecting it, or of any regulations made thereunder."

Sections 16 and 25 prescribe the conditions upon which the entrant
 40 becomes entitled to conveyance of the lands comprised within his homestead by letters patent. They are in these words:

" 16. Every entrant for a homestead shall, except as hereinafter otherwise provided, be required, before the issue of letters patent therefor,

(a) to have held the homestead for his own exclusive use and benefit for three years;

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(b) to have resided thereon at least six months in each of three years;

(c) to have erected a habitable house thereon;

(d) to have cultivated such an area of land in each year upon the homestead as is satisfactory to the Minister; and

(e) to be a British subject.

“ 25. The entrant for a homestead, or, in the event of his death, his legal representative or his assignee, or, in the event of his becoming insane or mentally incapable, his guardian or committee or any person who, in the event of his death, would be his legal representative, may, after the expiration of the period fixed by this Act for the completion of the requirements for obtaining letters patent for a homestead, make application therefor; and upon proving to the satisfaction of the local agent, or the officer acting for him, that the said requirements have been fulfilled, if the proof is accepted by the Commissioner of Dominion Lands, the entrant, or, in the event of his death, his legal representative or his assignee, shall be entitled to letters patent.”

A word of comment on these enactments will not be superfluous. The holder of a homestead during the term of his occupation, antecedent to the issue of the letters patent, has, subject to limitations not at present material, an exclusive right of occupation. It is not very profitable to seek, in the types of interests in land recognized by the common law, for some sort of common law description which may be supposed, by force of analogy, to be appropriate to the holder's interest in the land comprised within his homestead. That interest is most conveniently envisaged as a statutory interest *sui generis*, the character of which, as well as the rights annexed or incidental to it, must be ascertained from the *Dominion Lands Act*, and other statutes, as well as from any statutory regulations, “affecting it”. (R.S.C., 1927, c. 113, s. 11 (2)).

As to the entrant's rights in relation to the timber on his homestead, in which we are especially concerned, the statutory conditions require him to hold “the homestead for his exclusive use and benefit” for the statutory period; to reside there six months in each of the three years to cultivate “such an area * * * in each year * * * as is satisfactory to the Minister”.

These requirements seem clearly to imply, having regard to the well known conditions under which homestead duties are usually performed, a right, in addition to the right of protection against trespass, to cut timber, not only for the purposes of cultivation, but also for fencing, for building, for fuel and for all other purposes involved in the maintenance of his occupation and in the working of the homestead, in the manner contemplated by the statute. If there could be any doubt of this, it would be swept away by reference to regulations 50, 51, 52 and 54 quoted in the Dominion's factum, and to s. 103 of the statute, of which regulation 47 (e) is a textual reproduction.

The right to cut, for the purposes of enabling him to enjoy the homestead as exclusive occupant, as cultivator, and for his own domestic purposes, seems to be all that can reasonably be implied, as necessary or incidental to the exercise of rights expressly conferred, or necessary to enable him to perform his duties.

Furthermore, s. 103 of the Act which, as already mentioned, is textually reproduced in 47 (e), must be taken into account, for the purpose of ascertaining the character of the holder's right in relation to the timber on his land. That section seems to imply that possession of the timber on the land (which includes trees standing, fallen or cut (s. 2 (j)) remains in the Crown. Moreover, by s. 63 of the statute, no person cutting or carrying away any timber from Crown lands acquires any right to such timber. By s. 65, where it is mixed with other timber so that it is impossible to identify it, the whole mass is deemed to have been cut without authority, and, further, the property of the Crown is not lost by reason of the fact that it has been used for building purposes.

The right given by regulation 47 (f) is a right conditional upon obtaining a permit to cut timber either for sale to actual settlers for their own use or to others than actual settlers.

It is of no importance whether you regard this right to cut timber for commercial purposes, given by the regulation, as (1) an item in the sum of rights of the entrant as the holder of a homestead, or as (2) a separate right. It is plain that the right must be exclusive, as, admittedly, the statute does not contemplate the issue of licences or permits for cutting timber, on land within the boundaries of a subsisting homestead, to others than the holder; and, from either point of view, this right to cut timber would appear to vest in the holder of it an "interest in land" within the meaning of the agreements.

We think the former of these two ways of regarding this right is the better one. In effect, the statute and the regulations together give to the entrant the right to cut timber on his homestead "without stint", provided he complies with the conditions of the regulation. From this point of view, his right on obtaining his Crown grant to be repaid the dues paid by him under his permit seems to be plainly one of the "terms" of "the arrangement" under which he acquires, first, the rights enjoyed during his occupancy, and, afterwards, his right to a patent.

But, even considering the right to cut under the regulation as a separate right, we think it constitutes "an interest" in "Crown lands * * * as against the Crown" within the meaning of s. 2 of the agreements. Indeed, any other construction of these words would lead to singular results.

By s. 57 of the statute, the Governor in Council is authorized to make regulations for the "issue (to settlers) of permits to cut timber for building purposes on their farms or for fuel for themselves"; "to steamboat owners, for use on their steamboats"; "in connection with * * * mining * * * operations"; "for the construction of railways, bridges, churches, schools and public buildings, or any public works"; "for sale

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as cordwood”; “for pulpwood”. By s. 57 (2) the Governor in Council may make regulations for the issue of permits “to cut timber as cordwood, pulpwood, fence posts, telegraph poles or props for mining purposes or for any other purpose”. Acting under the powers so conferred upon him, the Governor in Council promulgated regulations authorizing permits in most, if not all, of these cases.

Consider a permit, for example, under s. 57 (1g) to cut timber “for sale as cordwood”, or, under s. 57 (2b), for “telegraph poles”, and in force on the date when the agreements took effect. It would be strange if the rights of the holder of such a permit were not protected by the agreement and we think such protection was intended to be and is provided by the words of clause 1, 10

“subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same,”

when read and construed (as they must be) together with the correlated words of clause 2,

“every other arrangement whereby any person has become entitled to any interest therein as against the Crown.”

“Interest,” in our opinion, includes, at least, every interest which it was the duty of the Crown to recognize, as trust embraces every obligation savouring of the nature of trust or equitable obligation affecting the lands, mines and minerals transferred, to which the Crown was under duty to give effect. From this point of view the right of repayment is one of the terms upon which he acquires his permit. 20

But it is necessary to notice an argument addressed to us to the effect that the right of the patentee to repayment is not a right arising under an “arrangement,” within the meaning of the agreements. The words of clause 2, “and every other arrangement whereby,” etc., must, it is argued, be construed in compliance with the rule *noscitur a sociis* as extending only to arrangements of a “contractual nature.” 30

The subject of the clause comprises two classes of arrangements, (1) contracts “to purchase or lease any Crown lands, mines or minerals,” and, (2) “every other arrangement whereby any person has become entitled to any interest therein as against the Crown”.

It is quite impossible, of course, to contend that the second class includes only arrangements which are strictly contracts, because if that had been the purpose of the clause, the word “contract” would have been used, instead of “arrangement,” to describe the kind of transactions falling within it.

Then, is the statutory system, under which the homestead entrant becomes entitled to the rights which the statute conditionally gives him, an “arrangement,” within this second class? It would not be misleading, though, perhaps, not technically accurate, to speak of the provisions of the statute as an offer, and the performance of the conditions as an acceptance, and the resulting statutory rights as rights arising from the offer so made 40

and so accepted. This is, we repeat, not a precise legal description of what takes place, but at least it may be stated that, if this statutory system under which these rights arise, involving, as it does in its working, co-operation between the entrant, in the performance of the prescribed statutory conditions, and the Crown and the officers of the Crown, in recognizing the resulting statutory rights of the entrant, and giving effect to them, is not an "arrangement" or does not involve arrangements of such a nature as to bring it within the second class, then the scope of that class, except in so far as it comprehends transactions which are simply
 10 and strictly contracts, embraces only an extremely narrow field. We think the language of the clause is altogether too explicit to justify such a restriction of its scope. It seems to us that the character of the arrangements contemplated is clearly defined by the adjectival phrase "whereby any person has become entitled to any interest therein as against the Crown"; and that these words should be construed in their ordinary sense.

As to the term "arrangement" itself, comment seems unnecessary. It clearly extends to the transaction or series of transactions, by which the entrant becomes entitled, first, to his homestead, and afterwards to
 20 his Crown grant; as well as to the transaction by which he acquires his rights under a permit.

We now turn to an argument vigorously urged upon us by the provinces, and especially, and very ably, in the factum filed on behalf of Manitoba. It is based upon this sentence in clause 1 :

30 "any payment received by Canada in respect of any such lands, mines, minerals or royalties before the coming into force of this agreement shall continue to belong to Canada whether paid in advance or otherwise, it being the intention that, except as herein otherwise specially provided, Canada shall not be liable to account to the Province for any payment made in respect of any of the said lands, mines, minerals or royalties before the coming into force of this agreement, and that the Province shall not be liable to account to Canada for any such payment made thereafter."

The argument is that the moneys received by the Dominion as timber dues under the regulation are not "payments," within the contemplation of the agreement. In one form of the argument, it is contended that these moneys are in the nature of a security for the performance of the conditions entitling the holder of the permit to a patent. It is also put
 40 in this way: the Dominion did not acquire these moneys, it is said, as owner, but held them only in trust or *in medio*, for disposition, according to the event, on the issue of letters patent, or the abandonment or cancellation of the homestead, as the case might be.

We see nothing to justify the conclusion that the Dominion did not receive these moneys as owner. There is nothing to indicate that they are to pass to a separate fund, or that they are to be dealt with in any other way than moneys received from any other source of revenue. It

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is impossible to doubt that, in considering the facts bearing upon the financial readjustments provided for, or contemplated by the agreements, moneys received from this source would be taken into account as against the Dominion. In our view, the contemplated character of the transactions in respect of these moneys is precisely what they appear to be on their face: first, a receipt of timber dues as revenue, dealt with in the same way as all such revenues are dealt with; secondly, a payment back to the patentee, of the moneys so paid in, under a statutory right, which came into existence on the issue of the patent. We are, therefore, unable to give effect to this contention.

There remains the question whether regulation 47 (*f*) was promulgated under statutory authority. We think this question must be answered in the affirmative on two grounds. First, the authority given by s. 57 (*2b*) which is in these words:

“permits to cut timber as cordwood, pulpwood, fence posts, telegraph poles or props for mining purposes or for any other purpose, over tracts of land not exceeding one square mile in area, except in the case of permits to cut pulpwood which may apply to tracts of such area as may be determined by the Governor in Council:”

seems to us to be adequate to support the regulation.

There was some suggestion that the words “for any other purpose” must be limited in obedience to *noscitur a sociis* in such a way as to exclude a regulation like regulation 47 (*f*) from its purview. We think you cannot exclude commercial purposes from the scope of the phrase “any other purpose”. When the whole of s. 57 is looked at it is plain that there is much overlapping and, we think, you cannot, in construing it, assume a series of strict logical disjunctions. We doubt if, regarding the section as a whole, the *ejusdem generis* rule has any proper application to the phrase “any other purpose”. We are satisfied, moreover, that regulation 47 (*f*) falls within the ambit of the powers conferred on the Governor in Council by s. 57 (1).

Admittedly, as already observed, the statute does not contemplate subjecting land held under homestead to the same regulations respecting the grant of permits or licences to cut timber as those governing the granting of such permits or licences in respect of lands still in possession of the Crown. But s. 57 does not itself regulate the issue of permits; it leaves the whole subject to the Governor in Council, and we see no reason for concluding that Crown timber on homestead land is not within the regulatory authority conferred by the section, which must, of course, be exercised in consonance with other provisions of the statute relating to homesteads.

There is another basis upon which the regulation can be sustained. By s. 74 (*k*) the Governor in Council is empowered to

“make such orders as are deemed necessary to carry out the provisions of this Act, according to their true intent, or to meet any cases which arise, and for which no provision is made in

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this Act; and further make any regulations which are considered necessary to give the provisions of this section full effect.”

We cannot think of any reason for excluding such regulations as 47 (e) and (f) from the ambit of the authority hereby created.

There is still a further question, and that is whether or not the patentee has, by force of the statute, a direct recourse against the province. Had we felt any doubt on the subject, we should have considered it improper to answer the question in the absence of some argument in the interest of the patentees. It is clear to us, however, that the *B.N.A. Act*, 1930, gives statutory force to the obligations of the provinces under arts. 1 and 2 of the agreements; this, we think, is the effect of s. 1 of the statute which is in these terms :

“1. The agreements set out in the Schedule to this Act are hereby confirmed and shall have the force of law notwithstanding anything in the *British North America Act*, 1867, or any Act amending the same, or any Act of Parliament of Canada, or in any Order in Council or terms or conditions of union made or approved under any such Act as aforesaid.”

The phrase “shall have the force of law,” when found in the statutory enactment and in the context in which it appears, can, we think, have no other meaning.

The answers which we shall respectfully submit to His Excellency are :

To the Interrogatory numbered One: The said obligation is an obligation of the respective provinces;

To the Interrogatory numbered Two: In view of the answer to Interrogatory No. One, this question does not arise; but, if our view had been that the provinces were not under a direct obligation to refund, we should have considered that the Dominion, on refunding such dues, would be entitled to recoupment from the province concerned.

In the Supreme Court of Canada.

No. 10.
Reasons for Judgment of Sir L. P. Duff, C.J. (concurring in by Rinifret, Lamont, Smith, Cannon, Crocket and Hughes J.J.)—continued.

No. 11.

Order in Council granting special leave to appeal to His Majesty in Council.

AT THE COURT AT BUCKINGHAM PALACE.

The 29th day of June, 1934.

Present :

THE KING'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT.

Mr. DOUGLAS HACKING.

LORD PRIVY SEAL.

Sir SHADI LAL.

LORD MOYNE.

In the Privy Council.

No. 11.
Order in Council granting special leave to appeal to His Majesty in Council, 29th June 1934.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 21st day of June 1934 in the words following viz. :—

“WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there

*In the
Privy
Council.*

No. 11.
Order in
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His Majesty
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29th June
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tinued.*

was referred unto this Committee a humble Petition of the Attorney-General of Manitoba the Attorney General of Saskatchewan and the Attorney General of Alberta and also a humble Petition of the Attorney General of British Columbia praying in common for special leave to appeal from a Judgment of the Supreme Court of Canada dated the 3rd day of October 1933 in the matter of a Reference concerning refunds of dues paid by certain homesteaders to the Dominion of Canada under the terms of Section 47 (F) of the Timber Regulations in Manitoba British Columbia Saskatchewan and Alberta and also as regards the Attorney General of British Columbia praying that he may be added as an Appellant in the said Appeal : 10

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petitions into consideration and having heard Counsel in support thereof and on behalf of the Attorney General of Canada Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the Supreme Court of Canada dated the 3rd day of October 1933 and that leave be granted to the Attorney General of British Columbia to appear as a separate Appellant in the said Appeal : 20

“And their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution. 30

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

D O C U M E N T S.

Documents.

No. 1.

No. 1.

**The Dominion Lands Act, R.S.C. 1927.
Chapter 113.**

(Separate Document.)

No. 2.

No. 2.

Timber Regulations.

(Separate Document.)

No. 3. (See pages 90 & 91.)

No. 3.

No. 4.

No. 4.
Agreement
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Manitoba,
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ber 1929.

Agreement for the transfer of the Natural Resources to the Province of Manitoba.

MEMORANDUM OF AGREEMENT.

Made this fourteenth day of December, 1929.

Between

THE GOVERNMENT OF THE DOMINION OF CANADA, represented
herein by the Honourable Ernest Lapointe, Minister of
Justice, and the Honourable Charles Stewart, Minister
of the Interior, - - - - - *Of the first part,*

and

20 THE GOVERNMENT OF THE PROVINCE OF MANITOBA, repre-
sented herein by the Honourable John Bracken,
Premier of Manitoba, and the Honourable Donald G.
McKenzie, Minister of Mines and Natural Resources,
Of the second part.

Whereas by section thirty of the *Manitoba Act*, being chapter three of
thirty-three Victoria, it was provided that all ungranted or waste lands in
the Province should be vested in the Crown and administered by the Govern-
ment of Canada for the purposes of the Dominion, subject to the conditions
and stipulations contained in the Agreement for the surrender of Rupert's
30 Land by the Hudson's Bay Company to Her Majesty;

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continued.

And whereas the boundaries of the Province as defined by the *Manitoba Act* were altered and the area included in the said Province enlarged by the statutes forty-four Victoria chapter fourteen, and two George the Fifth chapter thirty-two;

And whereas by an Order in Council adopted upon a report from the Right Honourable W. L. Mackenzie King, Prime Minister of Canada, and approved by His Excellency the Governor General on the first day of August, 1928, it was provided, pursuant to an agreement in that behalf entered into with representatives of the Government of the Province that the Province would be placed in a position of equality with the other 10 provinces of Confederation with respect to the administration and control of its natural resources as from its entrance into Confederation in 1870, that a commission of three persons would be appointed to inquire into and report as to what financial readjustments should be made to effect that end and that upon agreement between the Government of Canada and the Government of the Province upon the financial terms, following consideration of the report of the Commission, a transfer would be made by Canada to the Province of the unalienated natural resources within the boundaries of the Province subject to any trust existing in respect thereof and without prejudice to any interest other than that of the Crown in the same; 20

And whereas a Commission, composed of the Honourable Mr. Justice W. F. A. Turgeon, the Honourable Thomas Alexander Crerar and Charles M. Bowman, Esquire, was appointed to conduct an inquiry into the financial readjustments involved in the proposed transfer, and the Commission has since reported its findings and these findings have been accepted and agreed to by the Government of Canada and the Government of the Province;

And whereas it is now expedient, in order to carry out the purpose of the aforesaid Order in Council and to give effect to the agreement arrived at in the premises between the Government of Canada and the Government of the Province, to modify the provisions of the statutes above referred to as 30 herein set out.

Now therefore this agreement witnesseth :

TRANSFER OF PUBLIC LANDS GENERALLY.

1. In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of section one hundred and nine of the *British North America Act*, 1867, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Province, and all sums due or payable for such lands, mines, minerals or royalties, shall, from and after the coming into force of this agreement, and subject as therein otherwise provided, belong to the 40 Province, subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same, and the said lands, mines, minerals and royalties shall be administered by the Province for the purposes thereof, subject, until the Legislature of the Province otherwise provides, to the provisions of any Act of the Parliament of Canada relating to such administration; any payment received by Canada in respect of any such lands,

mines, minerals or royalties before the coming into force of this agreement shall continue to belong to Canada whether paid in advance or otherwise, it being the intention that, except as herein otherwise specially provided, Canada shall not be liable to account to the Province for any payment made in respect of any of the said lands, mines, minerals or royalties before the coming into force of this agreement, and that the Province shall not be liable to account to Canada for any such payment made thereafter.

2. The Province will carry out in accordance with the terms thereof every contract to purchase or lease any Crown lands, mines or minerals and every other arrangement whereby any person has become entitled to any interest therein as against the Crown, and further agrees not to affect or alter any term of any such contract to purchase, lease or other arrangement by legislation or otherwise, except either with the consent of all the parties thereto other than Canada or in so far as any legislation may apply generally to all similar agreements relating to lands, mines or minerals in the Province or to interests therein, irrespective of who may be the parties thereto.

3. Any power or right, which, by any such contract, lease or other arrangement, or by any Act of the Parliament of Canada relating to any of the lands, mines, minerals or royalties hereby transferred, or by any regulation made under any such Act is reserved to the Governor in Council or to the the Minister of the Interior or any other officer of the Government of Canada, may be exercised by such officer of the Government of the Province as may be specified by the Legislature thereof from time to time, and until otherwise directed, may be exercised by the Minister of Mines and Natural Resources of the Province.

4. The Province will perform every obligation of Canada arising by virtue of the provisions of any statute or order in council or regulation in respect of the public lands to be administered by it hereunder to any person entitled to a grant of lands by way of subsidy for the construction of railways or otherwise or to any railway company for grants of land for right of way, road bed, stations, station grounds, workshops, buildings, yards, ballast pits or other appurtenances.

5. The Province will further be bound by and will, with respect to any lands or interests in lands to which the Hudson's Bay Company may be entitled, carry out the terms and conditions of the Deed of Surrender from the said Company to the Crown as modified by the *Dominion Lands Act* and the Agreement dated the 23rd day of December, 1924, between His Majesty and the said Company, which said Agreement was approved by Order in Council dated the 19th day of December, 1924 (P.C. 2158) and in particular the Province will grant to the Company any lands in the Province which the Company may be entitled to select and may select from the lists of lands furnished to the Company by the Minister of the Interior under and pursuant to the said Agreement of the 23rd day of December, 1924, and will release and discharge the reservation in patents referred to in clause three of the said agreement, in case such release and discharge has not been made

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Documents. prior to the coming into force of this agreement. Nothing in this agree-
 ——— ment, or in any agreement varying the same as hereinafter provided,
 No. 4. shall in any way prejudice or diminish the rights of the Hudson's Bay Com-
 Agreement pany or affect any right to or interest in land acquired or held by the said
 for the Company pursuant to the Deed of Surrender from it to the Crown, the
 transfer of the Dominion Lands Act or the said Agreement of the 23rd day of December,
 of the 1924.
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SCHOOL LANDS FUND AND SCHOOL LANDS.

6. Upon the coming into force of this agreement, Canada will transfer 10
 to the Province the money or securities constituting that portion of the
 school lands fund, created under sections twenty-two and twenty-three of
The Act to amend and consolidate the several Acts respecting Public Lands of
the Dominion, being chapter thirty-one of forty-two Victoria, and subsequent
 statutes, which is derived from the disposition of any school lands within the
 Province or within those parts of the District of Keewatin and of the
 Northwest Territories now included within the boundaries of the said
 Province.

7. The School Lands Fund to be transferred to the Province as aforesaid
 and such of the school lands specified in section thirty-seven of the *Dominion*
Lands Act, being chapter one hundred and thirteen of the Revised Statutes 20
 of Canada, 1927, as pass to the administration of the Province under the
 terms hereof, shall be set aside and shall continue to be administered by the
 Province in accordance, *mutatis mutandis*, with the provisions of sections
 thirty-seven to forty of the *Dominion Lands Act*, for the support of schools
 organized and carried on therein in accordance with the law of the Province.

WATER.

8. The Province will pay to Canada, by yearly payments on the first
 day of January in each year after the coming into force of this agreement,
 the proportionate part, chargeable to the development of power on the
 Winnipeg River within the Province, of the sums which have been or shall 30
 hereafter be expended by Canada pursuant to the agreement between the
 Governments of Canada and of the Provinces of Ontario and Manitoba,
 made on the 15th day of November, 1922, and set forth in the schedule
 hereto, the Convention and Protocol relating to the Lake of the Woods
 entered into between His Majesty and the United States of America on the
 24th day of February, 1925, and the *Lac Seul Conservation Act*, 1928, being
 chapter thirty-two of eighteen and nineteen George the Fifth, the annual
 payments hereunder being so calculated as to amortise the expenditures
 aforesaid in a period of fifty years from the date of the coming into force of
 this agreement and the interest payable to be at the rate of five per cent per 40
 annum.

9. Canada agrees that the provision contained in section four of the
Dominion Water Power Act, being chapter two hundred and ten of the Revised
 Statutes of Canada, 1927, that every undertaking under the said Act is
 declared to be a work for the general advantage of Canada, shall stand

repealed as from the date of the coming into force of this agreement in so far as the same applies to such undertakings within the Province; nothing in this paragraph shall be deemed to affect the legislative competence of the Parliament of Canada to make hereafter any declaration under the tenth head of section ninety-two of the *British North America Act, 1867*.

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FISHERIES.

10 Except as herein otherwise provided, all rights of fishery shall, after the coming into force of this agreement, belong to and be administered by the Province, and the Province shall have the right to dispose of all such rights of fishery by sale, licence or otherwise, subject to the exercise by the Parliament of Canada of its legislative jurisdiction over sea-coast and inland fisheries.

INDIAN RESERVES.

20 11. All lands included in Indian reserves within the Province, including those selected and surveyed but not yet confirmed, as well as those confirmed, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, and the Province will from time to time, upon the request of the Superintendent General of Indian Affairs, set aside, out of the unoccupied Crown lands hereby transferred to its administration, such further areas as the said Superintendent General may, in agreement with the Minister of Mines and Natural Resources of the Province, select as necessary to enable Canada to fulfil its obligations under the treaties with the Indians of the Province, and such areas shall thereafter be administered by Canada in the same way in all respects as if they had never passed to the Province under the provisions hereof.

30 12. The provisions of paragraphs one to six inclusive and of paragraph eight of the agreement made between the Government of the Dominion of Canada and the Government of the Province of Ontario on the 24th day of March, 1924, which said agreement was confirmed by statute of Canada, fourteen and fifteen George the Fifth chapter forty-eight, shall (except so far as they relate to the *Bed of Navigable Waters Act*) apply to the lands included in such Indian reserves as may hereafter be set aside under the last preceding clause as if the said agreement had been made between the parties hereto, and the provisions of the said paragraphs shall likewise apply to the lands included in the reserves heretofore selected and surveyed, except that neither the said lands nor the proceeds of the disposition thereof shall in any circumstances become administrable by or be paid to the Province.

40 13. In order to secure to the Indians of the Province the continuance of the supply of game and fish for their support and subsistence, Canada agrees that the laws respecting game in force in the Province from time to time shall apply to the Indians within the boundaries thereof, provided, however, that the said Indians shall have the right, which the Province hereby assures to them, of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access.

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SOLDIER SETTLEMENT LANDS.

14. All interests in Crown lands in the Province upon the security of which any advance has been made under the provisions of the *Soldier Settlement Act*, being chapter 188 of the Revised Statutes of Canada, 1927, and amending Acts, shall continue to be vested in and administered by the Government of Canada for the purposes of Canada.

NATIONAL PARK.

15. The lands specified as included in the Riding Mountain Forest Reserve, as such reserve is described in the schedule to the *Dominion Forest Reserves and Parks Act*, being chapter seventy-eight of the Revised Statutes of Canada, 1927, as amended by eighteen and nineteen George the Fifth chapter twenty, shall be established as a national park, and the said lands, together with the mines and minerals (precious and base) in such area and the royalties incident thereto shall continue to be vested in and shall be administered by the Government of Canada for the purposes of a national park, but in the event of the Parliament of Canada at any time declaring that the said lands or any part thereof are no longer required for such purposes, the lands, mines, minerals (precious and base) and the royalties incident thereto, specified in any such declaration, shall forthwith upon the making thereof belong to the Province, and the provisions of paragraph three of this agreement shall apply thereto as from the date of such declaration. 10

16. The Parliament of Canada shall have exclusive legislative jurisdiction within the whole area included within the outer boundaries of the said park, notwithstanding that portions of such area may not form part of the park proper; the laws now in force within the said area shall continue in force only until changed by the Parliament of Canada or under its authority, provided, however, that all laws of the Province now or hereafter in force, which are not repugnant to any law or regulation made applicable within the said area by or under the authority of the Parliament of Canada, shall extend to and be enforceable within the same, and that all general taxing acts passed by the Province shall apply within the same unless expressly excluded from application therein by or under the authority of the Parliament of Canada. 30

SEED GRAIN, ETC., LIENS.

17. Every lien upon any interest in any unpatented land passing to the Province under this agreement, which is now held by Canada as security for an advance made by Canada for seed grain, fodder or other relief, shall continue to be vested in Canada, but the Province will, on behalf of Canada, collect the sums due in respect of such advances, except so far as the same are agreed to be uncollectible, and upon payment of any advance, any document required to be executed to discharge the lien may be executed by such officer of the Province as may be authorized by any provincial law in that behalf; the Province will account for and pay to Canada all sums belonging 40

to Canada collected hereunder, subject to such deduction to meet the expenses of collection as may be agreed upon between the Minister of the Interior and the Minister of Mines and Natural Resources or such other Minister of the Province as may be designated in that behalf under the laws thereof.

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GENERAL RESERVATION TO CANADA.

18. Except as herein otherwise expressly provided, nothing in this agreement shall be interpreted as applying so as to affect or transfer to the administration of the Province (a) any lands for which Crown grants have
10 been made and registered under the *Real Property Act* of the Province and of which His Majesty the King in the right of His Dominion of Canada is, or is entitled to become the registered owner at the date upon which this agreement comes into force, or (b) any ungranted lands of the Crown upon which public money of Canada has been expended or which are, at the date upon which this agreement comes into force, in use or reserved by Canada for the purpose of the federal administration.

HISTORIC SITES, BIRD SANCTUARIES, ETC.

19. The Province will not dispose of any historic site which is notified to it by Canada as such and which Canada undertakes to maintain as an
20 historic site. The Province will further continue and preserve as such the bird sanctuaries and public shooting grounds which have been already established and will set aside such additional bird sanctuaries and public shooting grounds as may hereafter be established by agreement between the Minister of the Interior and the Minister of Mines and Natural Resources, or such other Minister of the Province as may be specified under the laws thereof.

FINANCIAL TERMS.

20. In lieu of the provision made by section five of the statute two George the Fifth chapter thirty-two above referred to, Canada will, from and
30 after the date of the coming into force of this agreement, pay to the Province by half-yearly payments in advance, on the first days of January and July in each year, an annual sum based upon the population of the Province as from time to time ascertained by the quinquennial census thereof, as follows:—

The sum payable until the population of the said Province reaches eight hundred thousand shall be five hundred and sixty-two thousand five hundred dollars;

Thereafter, until such population reaches one million two hundred thousand, the sum payable shall be seven hundred and fifty thousand
40 dollars;

And thereafter the sum payable shall be one million one hundred and twenty-five thousand dollars.

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21. If at the date of the coming into force of this agreement any payment has been made under the provisions of section five of the statute two George the Fifth chapter thirty-two above referred to in respect of any half-year commencing before but terminating, after the said date, a proportionate part of the payment so made shall be taken as having been made under the provisions hereof.

22. In order to provide an adequate financial readjustment in favour of the Province for the period intervening between its entrance into Confederation in 1870 and the first day of July, 1908, before which date it received either no subsidy in lieu of public lands or a smaller subsidy than it should have received in order to put it on an equality with the other Provinces, Canada, forthwith after the coming into force of this agreement, will, in accordance with the report of the hereinbefore recited Commission, pay to the said Province the sum of four million, five hundred and eighty-four thousand two hundred and twelve dollars and forty-nine cents with interest thereon at the rate of five per cent per annum from the first day of July, 1929. 10

RECORDS.

23. Canada will after the coming into force of this agreement, deliver to the Province from time to time at the request of the Province the originals or complete copies of all records in any department of the Government of Canada relating exclusively to dealings with Crown lands mines and minerals, and royalties derived therefrom within the Province, and will give to the Province access to all other records, documents or entries relating to any such dealings and permit to be copied by the Province any of the documents required by it for the effective administration of the Crown lands, mines, minerals and royalties. 20

AMENDMENT OF AGREEMENT.

24. The foregoing provisions of this agreement may be varied by agreement confirmed by concurrent statutes of the Parliament of Canada and the Legislature of the Province. 30

WHEN AGREEMENT COMES INTO FORCE.

25. This agreement is made subject to its being approved by the Parliament of Canada and by the Legislature of the Province of Manitoba, and shall take effect on the fifteenth day of July, 1930, if His Majesty has theretofore given His Assent to an Act of the Parliament of the United Kingdom of Great Britain and Northern Ireland confirming the same, and if He has not given such Assent before the said day, then on such date as may be agreed upon.

In witness whereof the Honourable Ernest Lapointe, Minister of Justice, and the Honourable Charles Stewart, Minister of the Interior, have hereunto set their hands on behalf of the Dominion of Canada, and the Honourable John Bracken, Premier of Manitoba, and the Honourable Donald G. 40

McKenzie, Minister of Mines and Natural Resources thereof, have hereunto set their hands on behalf of the Province of Manitoba.

Documents.

Signed on behalf of the Government of Canada by the Honourable Ernest Lapointe, Minister of Justice, and the Honourable Charles Stewart, Minister of the Interior, in the presence of O. M. BIGGAR.

ERNEST LAPOINTE.
CHAS. STEWART.

10 Signed on behalf of the Province of Manitoba by the Honourable John Bracken, Premier of the said Province, and the Honourable Donald G. McKenzie, Minister of Mines and Natural Resources thereof, in the presence of W. J. MAJOR.

JOHN BRACKEN.
DONALD G. MCKENZIE.

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No. 5.

Agreement for the transfer of the Natural Resources to the Province of Alberta.

No. 5.
Agreement for the transfer of the Natural Resources to the Province of Alberta, 14th December 1929.

MEMORANDUM OF AGREEMENT.

Made this fourteenth day of December, 1929,

BETWEEN

20 THE GOVERNMENT OF THE DOMINION OF CANADA, represented herein by the Honourable Ernest Lapointe, Minister of Justice, and the Honourable Charles Stewart, Minister of the Interior,

Of the first part,

AND

THE GOVERNMENT OF THE PROVINCE OF ALBERTA, represented herein by the Honourable John Edward Brownlee, Premier of Alberta, and the Honourable George Hoadley, Minister of Agriculture and Health,

Of the second part.

30 Whereas by section twenty-one of *The Alberta Act*, being chapter three of four and five Edward the Seventh, it was provided that "All Crown lands, mines and minerals and royalties incident thereto, and the interest of the Crown in the waters within the province under *The North-west Irrigation Act*, 1898, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, subject to the provisions of any Act of the Parliament of Canada with respect to road allowances and roads or trails in force immediately before the coming into force of this Act, which shall apply to the said province with the substitution therein of the said province for the North-west Territories";

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And Whereas it is desirable that the Province should be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources as from its entrance into Confederation in 1905;

And Whereas it has been agreed between Canada and the said Province that the provisions of *The Alberta Act* should be modified as herein set out; Now therefore this agreement witnesseth :

TRANSFER OF PUBLIC LANDS GENERALLY.

1. In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of section one hundred and nine of the *British North America, 1867*, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Province, and all sums due or payable for such lands, mines, minerals or royalties, shall, from and after the coming into force of this agreement and subject as therein otherwise provided, belong to the Province, subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same, and the said lands, mines, minerals and royalties shall be administered by the Province for the purposes thereof, subject, until the Legislature of the Province otherwise provides, to the provisions of any Act of the Parliament of Canada relating to such administration; any payment received by Canada in respect of any such lands, mines, minerals or royalties before the coming into force of this agreement shall continue to belong to Canada whether paid in advance or otherwise, it being the intention that, except as herein otherwise specially provided, Canada shall not be liable to account to the Province for any payment made in respect of any of the said lands, mines, minerals or royalties before the coming into force of this agreement, and that the Province shall not be liable to account to Canada for any such payment made thereafter.

2. The Province will carry out in accordance with the terms thereof every contract to purchase or lease any Crown lands, mines or minerals and every other arrangement whereby any person has become entitled to any interest therein as against the Crown, and further agrees not to affect or alter any term of any such contract to purchase, lease or other arrangement by legislation or otherwise, except either with the consent of all the parties thereto other than Canada or in so far as any legislation may apply generally to all similar agreements relating to lands, mines or minerals in the Province or to interests therein, irrespective of who may be the parties thereto.

3. Any power or right, which, by any such contract, lease or other arrangement, or by any Act of the parliament of Canada relating to any of the lands, mines, minerals or royalties hereby transferred or by any regulation made under any such Act, is reserved to the Governor in Council or to the Minister of the Interior or any other officer of the Government of Canada, may be exercised by such officer of the Government of the Province

as may be specified by the Legislature thereof from time to time and until otherwise directed, may be exercised by the Provincial Secretary of the Province.

4. The Province will perform every obligation of Canada arising by virtue of the provisions of any statute or order in council or regulation in respect of the public lands to be administered by it hereunder to any person entitled to a grant of lands by way of subsidy for the construction of railways or otherwise or to any railway company for grants of lands for right of way, road bed, stations, station grounds, work-shops, buildings, yards, ballast pits or other appurtenances.

5. The Province will further be bound by and will, with respect to any lands or interests in lands to which the Hudson's Bay Company may be entitled, carry out the terms and conditions of the Deed of Surrender from the said Company to the Crown as modified by the *Dominion Lands Act* and the Agreement dated the 23rd day of December, 1924, between His Majesty and the said Company, which said Agreement was approved by Order in Council dated the 19th day of December, 1924 (P.C. 2158), and in particular the Province will grant to the Company any lands in the Province which the Company may be entitled to select and may select from the lists of lands furnished to the Company by the Minister of the Interior under and pursuant to the said Agreement of the 23rd day of December, 1924, and will release and discharge the reservation in patents referred to in clause three of the said agreement, in case such release and discharge has not been made prior to the coming into force of this agreement. Nothing in this agreement, or in any agreement varying the same as hereinafter provided, shall in any way prejudice or diminish the rights of the Hudson's Bay Company or affect any right to or interest in land acquired or held by the said Company pursuant to the Deed of Surrender from it to the Crown, the *Dominion Lands Act* or the said Agreement of the 23rd day of December, 1924.

SCHOOL LANDS FUND AND SCHOOL LANDS.

6. Upon the coming into force of this agreement, Canada will transfer to the Province the money or securities constituting that portion of the school lands fund, created under sections twenty-two and twenty-three of *The Act to amend and consolidate the several Acts respecting Public Lands of the Dominion*, being chapter thirty-one of forty-two Victoria, and subsequent statutes, which is derived from the disposition of any school lands within the Province or within that part of the Northwest Territories now included within the boundaries thereof.

7. The School Lands Fund to be transferred to the Province as aforesaid, and such of the school lands specified in section thirty-seven of the *Dominion Lands Act*, being chapter one hundred and thirteen of the Revised Statutes of Canada, 1927, as pass to the administration of the Province under the terms hereof, shall be set aside and shall continue to be administered by the Province in accordance *mutatis mutandis*, with the

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No. 5.

Agreement for the transfer of the Natural Resources to the Province of Alberta,

14th December 1929—
continued.

Documents. provisions of sections thirty-seven to forty of the *Dominion Lands Act*,
 ——— for the support of schools organized and carried on therein in accordance
 No. 5. with the law of the Province.

Agreement
for the
transfer
of the
Natural
Resources
to the
Province of
Alberta,
14th Decem-
ber 1929—
continued.

WATER.

8. Canada agrees that the provision contained in section four of the *Dominion Water Power Act*, being chapter two hundred and ten of the Revised Statutes of Canada, 1927, that every undertaking under the said Act is declared to be a work for the general advantage of Canada, shall stand repealed as from the date of the coming into force of this agreement in so far as the same applies to undertakings within the Province; nothing in this paragraph shall be deemed to affect the legislative competence of the Parliament of Canada to make hereafter any declaration under the tenth head of section ninety-two of the *British North America Act*, 1867. 10

FISHERIES.

9. Except as herein otherwise provided, all rights of fishery shall, after the coming into force of this agreement, belong to and be administered by the Province, and the Province shall have the right to dispose of all such rights of fishery by sale, licence or otherwise, subject to the exercise by the Parliament of Canada of its legislative jurisdiction over sea-coast and inland fisheries. 20

INDIAN RESERVES.

10. All lands included in Indian reserves within the Province, including those selected and surveyed but not yet confirmed, as well as those confirmed, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, and the Province will from time to time, upon the request of the Superintendent General of Indian Affairs, set aside, out of the unoccupied Crown lands hereby transferred to its administration, such further areas as the said Superintendent General may, in agreement with the appropriate Minister of the Province, select as necessary to enable Canada to fulfil its obligations under the treaties with the Indians of the Province, and such areas shall thereafter be administered by Canada in the same way in all respects as if they had never passed to the Province under the provisions hereof. 30

11. The provisions of paragraphs one to six inclusive and of paragraph eight of the agreement made between the Government of the Dominion of Canada and the Government of the Province of Ontario on the 24th day of March, 1924, which said agreement was confirmed by statute of Canada, fourteen and fifteen George the Fifth chapter forty-eight, shall (except so far as they relate to the *Bed of Navigable Waters Act*) apply to the lands included in such Indian reserves as may hereafter be set aside under the last preceding clause as if the said agreement had been made between the parties hereto, and the provisions of the said paragraphs shall likewise apply to the lands included in the reserves heretofore selected and surveyed, except that neither the said lands nor the proceeds of the disposition 40

thereof shall in any circumstances become administrable by or be paid to the Province. Documents.

12. In order to secure to the Indians of the Province the continuance of the supply of game and fish for their support and subsistence, Canada agrees that the laws respecting game in force in the Province from time to time shall apply to the Indians within the boundaries thereof, provided however, that the said Indians shall have the right, which the Province hereby assures to them, of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied Crown lands and on
10 any other lands to which the said Indians may have a right of access.

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continued.

SOLDIER SETTLEMENT LANDS.

13. All interests in Crown lands in the Province upon the security of which any advance has been made under the provisions of the *Soldier Settlement Act*, being chapter 188 of the Revised Statutes of Canada, 1927, and amending Acts, shall continue to be vested in and administered by the Government of Canada for the purposes of Canada.

NATIONAL PARKS.

14. The parks mentioned in the schedule hereto shall continue as national parks and the lands included therein, as the same are described
20 in the orders in council in the said schedule referred to (except such of the said lands as may be hereafter excluded therefrom), together with the mines and minerals (precious and base) in each of the said parks and the royalties incident thereto, shall continue to be vested in and administered by the Government of Canada as national parks, but in the event of the Parliament of Canada at any time declaring that the said lands or any part thereof are no longer required for park purposes, the lands, mines, minerals (precious and base) and the royalties incident thereto, specified in any such declaration, shall forthwith upon the making thereof belong
30 shall apply thereto as from the date of such declaration.

15. The Parliament of Canada shall have exclusive legislative jurisdiction within the whole area included within the outer boundaries of each of the said parks notwithstanding that portions of such area may not form part of the park proper; the laws now in force within the said area shall continue in force only until changed by the Parliament of Canada or under its authority, provided, however, that all laws of the Province now or hereafter in force, which are not repugnant to any law or regulation made applicable within the said area by or under the authority of the Parliament of Canada, shall extend to and be enforceable within the same,
40 and that all general taxing acts passed by the Province shall apply within the same unless expressly excluded from application therein by or under the authority of the Parliament of Canada.

16. The Government of Canada will introduce into the Parliament of Canada such legislation as may be necessary to exclude from the parks

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aforesaid certain areas forming part of certain of the said parks which have been delimited as including the lands now forming part thereof which are of substantial commercial value, the boundaries of the areas to be so excluded having been heretofore agreed upon by representatives of Canada and of the Province, and the Province agrees that upon the exclusion of the said areas as so agreed upon, it will not, by works outside the boundaries of any of the said parks, reduce the flow of water in any of the rivers or streams within the same to less than that which the Minister of the Interior may deem necessary adequately to preserve the scenic beauties of the said parks.

10

SEED GRAIN, ETC., LIENS.

17. Every lien upon any interest in any unpatented land passing to the Province under this agreement, which is now held by Canada as security for an advance made by Canada for seed grain, fodder or other relief, shall continue to be vested in Canada, but the Province will, on behalf of Canada, collect the sums due in respect of such advances, except so far as the same are agreed to be uncollectible, and upon payment of any such advance, any document required to be executed to discharge the lien may be executed by such officer of the Province as may be authorized by any provincial law in that behalf; the Province will account for and pay to Canada all sums belonging to Canada collected hereunder, subject to such deduction to meet the expenses of collection as may be agreed upon between the Minister of the Interior and the Provincial Secretary or such other Minister of the Province as may be designated in that behalf under the laws thereof.

20

GENERAL RESERVATION TO CANADA.

18. Except as herein otherwise expressly provided, nothing in this agreement shall be interpreted as applying so as to affect or transfer to the administration of the Province (a) any lands for which Crown grants have been made and registered under the *Land Titles Act* of the Province and of which His Majesty the King in the right of His Dominion of Canada is, or is entitled to become the registered owner at the date upon which the agreement comes into force, or (b) any ungranted lands of the Crown upon which public money of Canada has been expended or which are, at the date upon which this agreement comes into force, in use or reserved by Canada for the purpose of the federal administration.

30

HISTORIC SITES, BIRD SANCTUARIES, ETC.

19. The Province will not dispose of any historic site which is notified to it by Canada as such and which Canada undertakes to maintain as an historic site. The Province will further continue and preserve as such the bird sanctuaries and public shooting grounds which have been already established and will set aside such additional bird sanctuaries and public shooting grounds as may hereafter be established by agreement between the Minister of the Interior and the Provincial Secretary or such other Minister of the Province as may be specified under the laws thereof.

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FINANCIAL TERMS.

20. In lieu of the provision made by subsection one of section twenty of *The Alberta Act*, Canada will, from and after the date of the coming into force of this agreement, pay to the Province by half-yearly payments in advance, on the first days of January and July in each year, an annual sum based upon the population of the Province as from time to time ascertained by the quinquennial census thereof, as follows :

The sum payable until the population of the said Province reaches eight hundred thousand shall be five hundred and sixty-two thousand
10 five hundred dollars;

Thereafter, until such population reaches one million two hundred thousand, the sum payable shall be seven hundred and fifty thousand dollars;

And thereafter the sum payable shall be one million one hundred and twenty-five thousand dollars.

21. If at the date of the coming into force of this agreement any payment has been made under subsection one of section twenty of *The Alberta Act* in respect of any half-year commencing before but terminating after the said date, a proportionate part of the payment so made shall be taken as having
20 been made under the provisions hereof.

22. It is agreed that the Honourable W. F. A. Turgeon, a Judge of the Court of Appeal of Saskatchewan, Charles M. Bowman, of the Town of Waterloo, in the Province of Ontario, Esquire, Chairman of the Board of Directors of the Mutual Life Assurance Company of Canada, and Fred E. Osborne, Esquire, Mayor of the City of Calgary, or, if any of the foregoing cannot act, then such other person or persons as may be agreed upon, will be appointed commissioners under Part One of the *Inquiries Act* to enquire and report whether any, and, if any, what consideration, in addition to the sums provided in paragraph twenty hereof, should be paid to the province
30 in order that the province may be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources as from its entrance into Confederation in 1905, such commissioners to be empowered to decide what financial or other considerations are relevant to the enquiry, and the report to be submitted to the Parliament of Canada and to the Legislature of Alberta; and if by the said report, the payment of any additional consideration is recommended, then, upon agreement between the Governments of Canada and of the Province following the submission of such report, the said Governments will respectively introduce the legislation necessary to give effect to such
40 agreement.

RECORDS.

23. Canada will, after the coming into force of this agreement, deliver to the Province from time to time at the request of the Province the originals or complete copies of all records in any department of the Government of Canada relating exclusively to dealings with Crown lands, mines and

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Documents. minerals, and royalties derived therefrom within the Province, and will give to the Province access to all other records, documents or entries relating to any such dealings and permit to be copied by the Province any of the documents required by it for the effective administration of the Crown lands, mines, minerals and royalties.

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 for the
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 Alberta,
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 ber 1929—
continued.

AMENDMENT OF AGREEMENT.

24. The foregoing provisions of this agreement may be varied by agreement confirmed by concurrent statutes of the Parliament of Canada and the Legislature of the Province.

WHEN AGREEMENT COMES INTO FORCE.

10

25. This agreement is made subject to its being approved by the Parliament of Canada and by the Legislature of the Province of Alberta, and shall take effect on the first day of the calendar month beginning next after the day upon which His Majesty gives His Assent to an Act of the Parliament of the United Kingdom of Great Britain and Northern Ireland confirming the same.

In Witness Whereof the Honourable Ernest Lapointe, Minister of Justice, and the Honourable Charles Stewart, Minister of the Interior, have hereunto set their hands on behalf of the Dominion of Canada, and the Honourable John Edward Brownlee, Premier of Alberta, and the Honourable George Hoadley, Minister of Agriculture and Health thereof, have hereunto set their hands on behalf of the Province of Alberta.

Signed on behalf of the Government of Canada }
 by the Honourable Ernest Lapointe, }
 Minister of Justice and the Honourable } ERNEST LAPOINTE.
 Charles Stewart, Minister of the Interior, }
 in the presence of } CHAS. STEWART.
 O. M. BIGGAR. }

Signed on behalf of the Province of Alberta }
 by the Honourable John Edward Brownlee, } J. E. BROWNLEE. 30
 Premier of the said Province, and the }
 Honourable George Hoadley, Minister of }
 Agriculture and Health thereof, in the } GEO. HOADLEY.
 presence of }
 J. F. LYMBURN. }

SCHEDULE.

(not printed.)



No. 6.

Agreement for the transfer of the Railway Belt and Peace River Block to the Province of British Columbia.

MEMORANDUM OF AGREEMENT

Made this twentieth day of February, 1930.

Between

10 THE GOVERNMENT OF THE DOMINION OF CANADA, represented herein by the Honourable Ernest Lapointe, Minister of Justice, and the Honourable Charles Stewart, Minister of the Interior - - - - - of the First Part,

and

THE GOVERNMENT OF THE PROVINCE OF BRITISH COLUMBIA, represented herein by the Honourable Simon Fraser Tolmie, Premier and Minister of Railways of the said Province, and the Honourable Frederick Parker Burden, Minister of Lands thereof - - of the Second Part.

20 WHEREAS pursuant to paragraph eleven of the Terms of Union between the Dominion of Canada and the then Colony of British Columbia and to certain statutes of the Legislature of the Province of British Columbia, being chapter eleven of the statutes of the year eighteen hundred and eighty, chapter fourteen of the statutes of the year eighteen hundred and eighty-three, and chapter fourteen of the statutes of the year eighteen hundred and eighty-four, there were granted by the Province to Canada certain Crown lands in the Province by way of consideration for Canada's undertaking to secure the construction of a railway to connect the seaboard of the Province with the railway system of Canada and of Canada's paying to the Province from the date of the Union an annual sum of one hundred thousand dollars, the said Crown lands being defined in the statutes aforesaid and having become known as the Railway Belt and the Peace River Block;

30 And whereas a railway such as is described in paragraph eleven of the Terms of Union has been duly constructed and is in operation, and the Province has requested the retransfer to it of such of the lands in the Railway Belt and Peace River Block as remain unalienated;

40 And whereas the Honourable W. M. Martin, one of the Judges of the Court of Appeal for the Province of Saskatchewan, having by Order in Council dated the eighth day of March, 1927 (P.C. 422) been appointed a commissioner under Part One of the *Inquiries Act* to receive and inquire into the arguments of the Government of the Province of British Columbia in support of its claim for the reconveyance of the said lands to the Province, submitted his report as such commissioner in which he expressed the opinion that the Province could not by reason of its own agreements and statutes advance any legal claim, but that its request should be considered from the

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Agreement for the transfer of the Railway Belt and Peace River Block to the Province of British Columbia, 20th February 1930.

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continued.

standpoint of fairness and justice rather than from the strictly legal and contractual position, and in which he recommended that the said lands should be restored;

And whereas Canada has agreed accordingly to re-transfer the said lands to the Province on the terms hereinafter set out.

Now this Agreement Witnesseth that the parties have agreed as follows:—

TRANSFER OF RAILWAY BELT AND PEACE RIVER BLOCK GENERALLY.

1. Subject as hereinafter provided, all and every interest of Canada in the lands granted by the Province to Canada as hereinbefore recited are hereby re-transferred by Canada to the Province and shall, from and after the date of the coming into force of this agreement, be subject to the laws of the Province then in force relating to the administration of Crown lands therein. 10

2. Any payment received by Canada before the coming into force of this agreement in respect of any interest in the said lands shall continue to belong to Canada, whether paid in advance or otherwise, without any obligation on the part of Canada to account to the Province therefor, and the Province shall be entitled to receive and retain any such payment made after the coming into force of this agreement without accounting to Canada therefor. 20

3. The Province will carry out in accordance with the terms thereof every contract to purchase or lease any interest in any of the lands hereby transferred and every other arrangement whereby any person has become entitled to any interest therein as against Canada, and will perform every obligation of Canada arising by virtue of the provisions of any statute or order in council or regulation affecting the said lands hereby transferred to any person entitled to a grant of lands by way of subsidy for the construction of railways or otherwise, or to any railway company for grants of land for right of way, roadbed, stations, station grounds, workshops, buildings, yards, ballast pits or other appurtenances. 30

4. Any power or right which, by any agreement or other arrangement relating to any interest in the lands hereby transferred or by any Act of the Parliament of Canada relating to the said lands, or by any regulation made under any such Act, is reserved to the Governor in Council, or to the Minister of the Interior or any other officer of the Government of Canada, may be exercised by the Lieutenant-Governor of the Province in Council or by such officer of the Government of the Province as is authorized to exercise similar powers or rights under the laws of the Province relating to the administration of Crown lands therein.

5. The application to the lands hereby transferred of the laws of the Province relating to the administration of Crown lands therein, as hereinbefore provided, shall not be deemed to affect the terms of any alienation by Canada of any interest in the said lands or of any agreement made by Canada for such alienation, or the rights to which any person may have become entitled as aforesaid. 40

ORDNANCE AND ADMIRALTY LANDS.

Documents.

6. Nothing in this agreement shall be interpreted as affecting or transferring to the Province any ordnance or admiralty lands included in the Railway Belt which have been or are hereafter transferred or surrendered to Canada by the Government of the United Kingdom of Great Britain and Ireland or of the United Kingdom of Great Britain and Northern Ireland.

7. All ordnance and admiralty lands which were set aside as such before the sixteenth day of May, eighteen hundred and seventy-one, and which have been or are hereafter transferred or surrendered to Canada as aforesaid, whether the same lie within or without the said Railway Belt, shall continue to be vested in and administered by the Government of Canada for the purposes of Canada, provided, however, that Canada shall recognize and confirm any alienation of any part of the said lands heretofore made by the Province and shall perform and execute every obligation of the Province which has arisen with respect to any part of the said lands by virtue of any agreement made by the Province in respect thereof, or by virtue of any Act of the Legislature of the Province or of any order in council or regulation made under the authority of any such Act.

8. The location and boundaries of the several parcels of ordnance and admiralty lands aforesaid shall be referred for determination to two persons one of whom shall be appointed by the Governor General in Council, and one by the Lieutenant-Governor in Council, and in the event of a disagreement between the said two persons, an umpire shall be selected by agreement between the Minister of Justice for Canada and the Attorney-General of British Columbia.

PUBLIC WORKS.

9. Notwithstanding anything in the foregoing paragraphs of this agreement, Canada shall retain the wharves and wharf sites situate within the Railway Belt and specified in Schedule One to this agreement, together with the lands adjacent thereto which are required for the convenient use of any such wharf or wharf site; the boundaries of the parcels of land reserved to Canada under this clause shall be ascertained and defined by agreement between Canada and the Province as soon as convenient.

10. Forthwith upon any of the said parcels of land ceasing to be required for use as a wharf site, such parcel shall revert to and become the property of the Province.

HARBOURS.

11. Nothing in the foregoing paragraphs of this agreement shall extend to the foreshores or beds of harbours heretofore established within the Railway Belt, but the said foreshores and beds shall continue to be vested in Canada, and there shall in addition be reserved and retained by Canada the foreshores and beds of the Fraser River and Pitt River lying above the eastern boundaries of New Westminster Harbour and below lines to be ascertained and defined by agreement at the junction of Kanaka Creek with

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Documents. the Fraser River and at the point of the exit of the Pitt River from Pitt Lake.

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continued.

SUMAS DYKING LANDS.

12. The Province will grant and assure to the Canadian Pacific Railway Company the lands occupied or required by it for the purpose of the construction and operation of its railway in that part of the Railway Belt hereinbefore referred to which is known as the Sumas Dyking Lands, in such manner that the said Company may obtain a registered title to the said lands in fee simple free from encumbrance.

INDIAN RESERVES.

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13. Nothing in this agreement shall extend to the lands included within Indian reserves in the Railway Belt and the Peace River Block, but the said reserves shall continue to be vested in Canada in trust for the Indians on the terms and conditions set out in a certain order of the Governor General of Canada in Council approved on the 3rd day of February, 1930 (P.C. 208).

PARKS.

14. Nothing in the foregoing clauses of this agreement shall be construed as re-transferring to the Province any interest of Canada in any of the lands forming part of the Railway Belt which are included within any of the national parks described in Schedule Two to this agreement.

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15. In order that the said national parks may be administered by Canada as such, all the rights of the Crown in all the lands, mines and minerals (precious and base) and the royalties incident thereto within any of the said parks are hereby vested in Canada, so far as they are not already so vested.

16. The Parliament of Canada shall have exclusive legislative jurisdiction within the whole area included within the outer boundaries of each of the said parks, notwithstanding that portions of any such area may not form part of the park proper, and the laws now in force within such areas shall continue so in force only until changed by the Parliament of Canada or under its authority, provided, however, that all laws of the Province now or hereafter in force, which are not repugnant to any law or regulation made applicable within the said areas or any of them by or under the authority of the Parliament of Canada, shall extend to and be enforced within the same, and that all general taxing acts passed by the Province shall apply within the same unless expressly excluded from application therein by or under the authority of the Parliament of Canada.

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17. On the termination, by effluxion of time or surrender or otherwise, of any interest in any lands included within any of the said areas which is outstanding in any person at the date of the coming into force of this agreement, the lands in which such interest existed shall vest in and shall thereafter be administered by Canada as part of the national park within the outer boundaries of which such lands lie.

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18. All rights of the Crown in any waters within the said parks shall be vested in and administered by Canada, and the Province will not by works outside any such park reduce the flow of water in any of the rivers or streams within the said park to less than the flow which the Minister of the Interior may deem necessary adequately to preserve the scenic beauty of the said park.

19. In the event of the Parliament of Canada at any time declaring that any of the said areas or any part of any of them are no longer required for national park purposes, the lands, mines, minerals (precious and base) and the royalties incident thereto specified in any such declaration shall forthwith upon the making thereof belong to the Province and the provisions of paragraphs one to five of this agreement shall apply thereto as from the date of such declaration.

20. In the event of its being hereafter agreed by Canada and the Province that any area or areas of land in the Province, in addition to those specified in Schedule Two to this agreement, should be set aside as national parks and be administered by Canada, the foregoing provisions of this agreement on the subject of parks may be applied to such area or areas with such modification as may be agreed upon.

20

SOLDIERS' SETTLEMENT LANDS.

21. Nothing in this agreement shall have the effect of transferring to the Province the interest of Canada in any part of the said lands upon the security of which any advance has been made under the provisions of the *Soldier Settlement Act*, being chapter 188 of the Revised Statutes of Canada, 1927, and amending Acts, until after the provisions of the said Act have ceased to apply to or affect the said lands.

HISTORIC SITES AND BIRD SANCTUARIES.

22. The Province will not dispose of any historic site which is notified to it by Canada as such and which Canada undertakes to maintain as an historic site. The Province will further continue and preserve as such the bird sanctuaries which have been already established by Canada in the Railway Belt or Peace River Block, and will set aside such additional bird sanctuaries as may hereafter be established by agreement between the Minister of the Interior and the Attorney-General or such other Minister of the Province as may be specified under the laws thereof.

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GENERAL RESERVATION TO CANADA.

23. Except as herein otherwise expressly provided, nothing in this agreement shall be interpreted as applying so as to affect or transfer to the administration of the Province (a) any lands for which Crown grants have been made and registered under *The Land Registry Act* of the Province and of which His Majesty the King in the right of His Dominion of Canada is, or is entitled to become, the registered owner at the date upon which this agreement comes into force, or (b) any ungranted lands of the Crown

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Documents. upon which public money of Canada has been expended or which are, at the
 ——— date upon which this agreement comes into force, in use or reserved by
 No. 6. Canada for the purpose of the federal administration.

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 Peace River
 Block to the
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 ary 1930—
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SUBSIDY CONTINUED.

24. Notwithstanding the re-transfer of the hereinbefore recited lands, Canada will continue to pay annually to the Province, by half-yearly payments on the first days of January and July in each year, the sum of one hundred thousand dollars, as provided in paragraph eleven of the Terms of Union aforesaid.

RECORDS.

25. Canada will, after the coming into force of this agreement, deliver to the Province from time to time at the request of the Province the originals or complete copies of all records in any department of the Government of Canada relating exclusively to any dealings with any of the lands hereby re-transferred to the Province and will give to the Province access to all other records, documents or entries relating to any such dealings and permit to be copied by the Province any of the documents required by it for the effective administration of the lands hereby transferred.

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AMENDMENT OF AGREEMENT.

26. The foregoing provisions of this agreement may be varied by agreement confirmed by concurrent statutes of the Parliament of Canada and the Legislature of the Province.

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WHEN AGREEMENT COMES INTO FORCE.

27. This agreement is made subject to its being approved by the Parliament of Canada and by the Legislature of the Province of British Columbia, and shall take effect on the first day of the calendar month beginning next after the day upon which His Majesty gives His Assent to an Act of the Parliament of the United Kingdom of Great Britain and Northern Ireland confirming the same.

IN WITNESS WHEREOF the Honourable Ernest Lapointe, Minister of Justice, and the Honourable Charles Stewart, Minister of the Interior, have hereunto set their hands on behalf of the Dominion of Canada, and the Honourable Simon Fraser Tolmie, Premier and Minister of Railways of the said Province, and the Honourable Frederick Parker Burden, Minister of Lands thereof, have hereunto set their hands on behalf of the Province of British Columbia.

30

Signed on behalf of the Government of
 Canada by the Honourable Ernest
 Lapointe, Minister of Justice, and the
 Honourable Charles Stewart, Minister of
 the Interior, in the presence of } ERNEST LAPOINTE.
 } CHAS. STEWART.

40

O. M. BIGGAR.

Signed on behalf of the Government of
 British Columbia by the Honourable
 Simon Fraser Tolmie, Premier and
 Minister of Railways thereof, and the
 Honourable Frederick Parker Burden,
 Minister of Lands thereof. } S. F. TOLMIE.
 } F. P. BURDEN.

Documents.

No. 6.
 Agreement
 for the
 transfer of
 the Railway
 Belt and
 Peace River
 Block to the
 Province
 of British
 Columbia,
 20th Febru-
 ary 1930—
continued.

10 R. H. POOLEY,
 Attorney-General.
 N. S. LOUGHEED,
 Minister of Public Works.
 H. CATHCART,
 Deputy Minister of Lands.
 OSCAR C. BASS,
 Deputy Attorney-General.

SCHEDULE ONE.

WHARF LOCATIONS.

Brownsville.	Donatella.	Riverside.	Celista.
Coquitlam.	Barnston Island.	Mission.	Chase.
Port Coquitlam.	Port Kells.	Hatzic.	Eagle Bay.
20 Minnekahda.	Gordon Road.	Dewdney.	Wanlock.
Harris Road.	McAdams.	Murphy's Landing.	Glenedon.
Hammond.	Langley.	Magars Landing.	Magna Bay.
Port Moody.	McIvers.	Sumas.	Sicamous.
Ioco.	McKays.	Chilliwack Upper	Salmon Arm.
Haney.	Glen Valley.	Landing.	Seymour Arm.
Albion.	Marsh's.	Minto Landing.	Sorrento.
Whonnock.	Mount Lehman.	Anglemont.	Scotch Creek.
Ruskin.	Matsqui.	Blind Bay.	Pritchard.
		Canoe.	
30 S. F. T.		E. L.	
F. P. B.		C. S.	

SCHEDULE TWO.

(Not printed.)

Documents.

No. 7.

No. 7. Agreement for the transfer of the Natural Resources to the Province of Saskatchewan, 20th March 1930.

Agreement for the transfer of the Natural Resources to the Province of Saskatchewan.

MEMORANDUM OF AGREEMENT.

Made this 20th day of March, 1930.

BETWEEN

THE GOVERNMENT OF THE DOMINION OF CANADA, represented herein by the Honourable Ernest Lapointe, Minister of Justice, and the Honourable Charles Stewart, Minister of the Interior,

Of the first part, 10

AND

THE GOVERNMENT OF THE PROVINCE OF SASKATCHEWAN, represented herein by the Honourable James Thomas Milton Anderson, Premier and Minister of Education of the Province, and the Honourable Murdoch Alexander MacPherson, Attorney-General,

Of the second part.

Whereas by section twenty-one of the *Saskatchewan Act*, being chapter forty-two of the four and five Edward the Seventh, it was provided that " All Crown lands, mines and minerals and royalties incident thereto, and the interest of the Crown in the waters within the Province under the *North-West Irrigation Act*, 1898, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, subject to the provisions of any Act of the Parliament of Canada with respect to road allowances and roads or trails in force immediately before the coming into force of this Act, which shall apply to the said Province with the substitution therein of the said Province for the North-West Territories " ;

And whereas the Government of Canada desires that the Province should be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources as from its entry into Confederation in 1905;

And whereas the Government of the Province contends that, before the Province was constituted and entered into Confederation as aforesaid, the Parliament of Canada was not competent to enact that the natural resources within the area now included within the boundaries of the Province should vest in the Crown and be administered by the Government of Canada for the purposes of Canada and was not entitled to administer the said natural resources otherwise than for the benefit of the residents within the said area, and moreover that the Province is entitled to be and should be placed in a position of equality with the other Provinces of Confederation with respect to its natural resources as from

the fifteenth day of July, 1870, when Rupert's Land and the North-Western Territory were admitted into and became part of the Dominion of Canada :

And whereas it has been agreed between Canada and the said Province that the said section of the *Saskatchewan Act* should be modified and that provision should be made for the determination of the respective rights and obligations of Canada and the Province as herein set out :

Now therefore this agreement witnesseth :

TRANSFER OF PUBLIC LANDS GENERALLY

10 1. In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of section one hundred and nine of the British North America Act, 1867, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Province, and all sums due or payable for such lands, mines, minerals or royalties, shall from and after the coming into force of this agreement and subject as therein otherwise provided, belong to the Province, subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same, and the
20 said lands, mines, minerals and royalties shall be administered by the Province for the purposes thereof, subject, until the Legislature of the Province otherwise provides, to the provisions of any Act of the Parliament of Canada relating to such administration; any payment received by Canada in respect of any such lands, mines, minerals or royalties before the coming into force of this agreement shall continue to belong to Canada whether paid in advance or otherwise, it being the intention that, except as herein otherwise specially provided, Canada shall not be liable to account to the Province for any payment made in respect of any of the said lands, mines, minerals, or royalties before the coming into force of this agreement, and
30 that the Province shall not be liable to account to Canada for any such payment made thereafter.

2. The Province will carry out in accordance with the terms thereof every contract to purchase or lease any Crown lands, mines or minerals and every other arrangement whereby any person has become entitled to any interest therein as against the Crown, and further agrees not to affect or alter any term of any such contract to purchase, lease or other arrangement by legislation or otherwise, except either with the consent of all the parties thereto other than Canada or in so far as any legislation may apply generally to all similar agreements relating to lands, mines or minerals in the Province or to interests therein, irrespective of who may
40 be the parties thereto.

3. Any power or right, which, by any such contract, lease or other arrangement, or by any Act of the Parliament of Canada relating to any of the lands, mines, minerals or royalties hereby transferred or by any regulation made under any such Act, is reserved to the Governor in Council or to the Minister of the Interior or any other officer of the

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—continued.

Documents. Government of Canada, may be exercised by such officer of the Govern-
 — ment of the Province as may be specified by the Legislature thereof
 No. 7. from time to time, and until otherwise directed, may be exercised by the
 Agreement Provincial Secretary of the Province.
 for the
 transfer
 of the
 Natural
 Resources
 to the
 Province of
 Saskatche-
 wan, 20th
 March 1930
 —continued.

Government of Canada, may be exercised by such officer of the Govern-
 ment of the Province as may be specified by the Legislature thereof
 from time to time, and until otherwise directed, may be exercised by the
 Provincial Secretary of the Province.

4. The Province will perform every obligation of Canada, arising by
 virtue of the provisions of any statute or Order in Council or regulation
 in respect of the public lands to be administered by it hereunder, to any
 person entitled to a grant of lands by way of subsidy for the construction
 of railways or otherwise or to any railway company for grants of lands for
 right of way, roadbed, stations, station grounds, work-shops, buildings, 10
 yards, ballast pits or other appurtenances.

5. The Province will further be bound by and will, with respect to any
 lands or interest in lands to which the Hudson's Bay Company may be
 entitled, carry out the terms and conditions of the Deed of Surrender from
 the said Company to the Crown as modified by the *Dominion Lands Act*
 and the agreement dated the 23rd day of December, 1924, between His
 Majesty and the said Company, which said Agreement was approved by
 Order in Council dated the 19th day of December, 1924 (P.C. 2158), and in
 particular the Province will grant to the Company any lands in the Province 20
 which the Company may be entitled to select and may select from the lists
 of lands furnished to the Company by the Minister of the Interior under
 and pursuant to the said agreement of the 23rd day of December, 1924, and
 will release and discharge the reservation in patents referred to in clause
 three of the said agreement, in case such release and discharge has not
 been made prior to the coming into force of this agreement. Nothing in
 this agreement, or in any agreement varying the same as hereinafter
 provided, shall in any way prejudice or diminish the rights of the Hudson's
 Bay Company or affect any right to or interest in land acquired or held
 by the said Company pursuant to the Deed of Surrender from it to the
 Crown, the *Dominion Lands Act* or the said agreement of the 23rd day of 30
 December, 1924.

SCHOOL LANDS FUND AND SCHOOL LANDS

6. Upon the coming into force of this agreement, Canada will transfer
 to the Province the money or securities constituting that portion of the
 school lands fund, created under sections twenty-two and twenty-three
 of the *Act to amend and consolidate the several Acts respecting Public Lands*
of the Dominion, being chapter thirty-one of forty-two Victoria, and
 subsequent statutes, which is derived from the disposition of any school
 lands within the Province or within that part of the Northwest Territories
 now included within the boundaries thereof. 40

7. The school lands fund to be transferred to the Province as aforesaid,
 and such of the school lands specified in section thirty-seven of the *Dominion*
Lands Act, being chapter one hundred and thirteen of the *Revised Statutes*
of Canada, 1927, as pass to the administration of the Province, under the
 terms hereof, shall be set aside and shall continue to be administered by the

Province in accordance, *mutatis mutandis*, with the provisions of sections thirty-seven to forty of the *Dominion Lands Act*, for the support of schools organized and carried on therein in accordance with the law of the Province.

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Agreement
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—*continued.*

WATER

8. Canada agrees that the provision contained in section four of the *Dominion Water Power Act*, being chapter two hundred and ten of the *Revised Statutes of Canada, 1927*, that every undertaking under the said Act is declared to be a work for the general advantage of Canada, shall stand repealed as from the date of the coming into force of this agreement in so far as the same applies to undertakings within the Province; nothing in this paragraph shall be deemed to affect the legislative competence of the Parliament of Canada to make hereafter any declaration under the tenth head of section ninety-two of the *British North America Act, 1867*.

FISHERIES

9. Except as herein otherwise provided, all rights of fishery shall, after the coming into force of this agreement, belong to and be administered by the Province, and the Province shall have the right to dispose of all such rights of fishery by sale, licence or otherwise, subject to the exercise by the Parliament of Canada of its legislative jurisdiction over sea-coast and inland fisheries.

INDIAN RESERVES

10. All lands included in Indian reserves within the Province, including those selected and surveyed but not yet confirmed, as well as those confirmed, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, and the Province will from time to time, upon the request of the Superintendent General of Indian Affairs, set aside, out of the unoccupied Crown lands hereby transferred to its administration, such further areas as the said Superintendent General may, in agreement with the appropriate Minister of the Province, select as necessary to enable Canada to fulfil its obligations under the treaties with the Indians of the Province, and such areas shall thereafter be administered by Canada in the same way in all respects as if they had never passed to the Province under the provisions hereof.

11. The provisions of paragraph one to six inclusive and of paragraph eight of the agreement made between the Government of the Dominion of Canada and the Government of the Province of Ontario on the 24th day of March, 1924, which said agreement was confirmed by statute of Canada, fourteen and fifteen George the Fifth chapter forty-eight, shall (except so far as they relate to the *Bed of Navigable Waters Act*) apply to the lands included in such Indian reserves as may hereafter be set aside under the last preceding clause as if the said agreement had been made between the parties hereto, and the provisions of the said paragraphs shall likewise apply to the lands included in the reserves heretofore selected and surveyed, except that neither the said lands nor the proceeds of the disposition thereof

Documents. shall in any circumstances become administrable by or be paid to the Province.

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12. In order to secure to the Indians of the Province the continuance of the supply of game and fish for their support and subsistence, Canada agrees that the laws respecting game in force in the Province from time to time shall apply to the Indians within the boundaries thereof, provided, however, that the said Indians shall have the right, which the Province hereby assures to them, of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access. 10

SOLDIER SETTLEMENT LANDS

13. All interest in Crown lands in the Province upon the security of which any advance has been made under the provisions of the *Soldier Settlement Act*, being chapter 188 of the *Revised Statutes of Canada, 1927*, and amending Acts, shall continue to be vested in and administered by the Government of Canada for the purposes of Canada.

NATIONAL PARKS

14. The Prince Albert National Park shall continue as a national park and the lands included therein as the same are described in Orders made by the Governor in Council on the twenty-fourth day of March, 1927 (P.C. 524), the eighteenth day of October, 1928, (P.C. 1846) and the sixth day of February, 1929 (P.C. 162), together with the mines and minerals (precious and base) in the said park and the royalties incident thereto, shall continue to be vested in and administered by the Government of Canada as a national park, but in the event of the Parliament of Canada at any time declaring that the said land or any part thereof is no longer required for park purposes, the lands, mines, minerals (precious and base) and the royalties incident thereto, specified in any such declaration, shall forthwith upon the making thereof belong to the Province, and the provisions of paragraph three of this agreement shall apply thereto as from the date of such declaration. 20 30

15. The Parliament of Canada shall have exclusive legislative jurisdiction within the whole area included within the outer boundaries of the said park, notwithstanding that portions of the said area may not form part of the park proper; the laws now in force within the said area shall continue in force only until changed by the Parliament of Canada or under its authority, provided, however, that all laws of the Province now or hereafter in force, which are not repugnant to any law or regulation made applicable within the said area by or under the authority of the Parliament of Canada, shall extend to and be enforceable within the same, and that all general taxing Acts passed by the Province shall apply within the same unless expressly 40 excluded from application therein by or under the authority of the Parliament of Canada.

16. The Province will not, by works outside the boundaries of the said park, reduce the flow of water in any of the rivers or streams within the same to less than that which the Minister of the Interior may deem necessary adequately to preserve the scenic beauties of the said park.

17. In the event of its being hereafter agreed by Canada and the Province that any area or areas of land in the Province, in addition to that hereinbefore specified, should be set aside as national parks and be administered by Canada, the foregoing provisions of this agreement on the subject of parks may be applied to such area or areas with such modification as may be agreed upon.

SEED GRAIN, ETC., LIENS.

18. Every lien upon any interest in any unpatented land passing to the Province under this agreement, which is now held by Canada as security for an advance made by Canada for seed grain, fodder or other relief, shall continue to be vested in Canada, but the Province will, on behalf of Canada, collect the sums due in respect of such advances, except so far as the same are agreed to be uncollectible, and upon payment of any such advance, any document required to be executed to discharge the lien may be executed by such officer of the Province as may be authorized by any provincial law in that behalf; the Province will account for and pay to Canada all sums belonging to Canada collected hereunder, subject to such deduction to meet the expenses of collection as may be agreed upon between the Minister of the Interior and the Provincial Secretary or such other Minister of the Province as may be designated in that behalf under the laws thereof.

GENERAL RESERVATION OF CANADA.

19. Except as herein otherwise expressly provided, nothing in this agreement shall be interpreted as applying so as to affect or transfer to the administration of the Province (a) any lands for which Crown grants have been made and registered under the *Land Titles Act* of the Province and of which His Majesty the King in the right of His Dominion of Canada is, or is entitled to become the registered owner at the date upon which this agreement comes into force, or (b) any ungranted lands of the Crown upon which public money of Canada has been expended or which are, at the date upon which this agreement comes into force, in use or reserved by Canada for the purpose of the federal administration.

HISTORIC SITES, BIRD SANCTUARIES, ETC.

20. The Province will not dispose of any historic site which is notified to it by Canada as such and which Canada undertakes to maintain as an historic site. The Province will further continue and preserve as such the bird sanctuaries and public shooting grounds which have been already established and will set aside such additional bird sanctuaries and public shooting grounds as may hereafter be established by agreement between the Minister of the Interior and the Provincial Secretary or such other Minister of the Province as may be specified under the laws thereof.

FINANCIAL TERMS.

21. In lieu of the provision made by subsection one of section twenty of the *Saskatchewan Act*, Canada will, from and after the date of the coming into force of this agreement, pay to the Province by half-yearly payments in advance, on the first days of January and July in each year, an annual

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Documents.

No. 7.
 Agreement
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 transfer
 of the
 Natural
 Resources
 to the
 Province of
 Saskatche-
 wan, 20th
 March 1930
 —continued.

sum based upon the population of the Province as from time to time ascertained by the quinquennial census thereof, as follows :—

The sum payable until such population reaches one million two hundred thousand shall be seven hundred and fifty thousand dollars ;

And thereafter the sum payable shall be one million one hundred and twenty-five thousand dollars.

22. If at the date of the coming into force of this agreement any payment has been made under subsection one of section twenty of the *Saskatchewan Act* in respect of any half-year commencing before but terminating after the said date, a proportionate part of the payment so made shall be taken as having been made under the provisions hereof. 10

23. Provision will be made pursuant to section fifty-five of the *Supreme Court Act*, being chapter thirty-five of the *Revised Statutes of Canada, 1927*, to submit for the consideration of the Supreme Court of Canada questions agreed upon between the parties hereto as being appropriate to obtain the judgment of the said Court, subject to appeal to His Majesty in Council in accordance with the usual practice, as to the rights of Canada and the Province respectively, before the first day of September, 1905, in or to the lands, mines or minerals (precious or base) now lying within the boundaries of the Province, and as to any alienation by Canada before the said date of any of the said lands, mines or minerals or royalties incident thereto. 20

24. As soon as final answers to the questions submitted under the last preceding paragraph have been given, the Government of Canada will appoint three persons to be agreed upon to be Commissioners under Part I of the *Inquiries Act*, to inquire and report whether any, and if any, what consideration, in addition to the sums provided in paragraph twenty-one hereof, shall be paid to the Province in order that the Province may be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources either as from the first day of September, 1905, or as from such earlier date, if any, as may appear to be proper, having regard to the answers to the questions submitted as aforesaid ; such commissioners to be empowered to decide what financial or other considerations are relevant to the inquiry and the report to be submitted to the Parliament of Canada and to the Legislature of Saskatchewan, if by the said report, the payment of any additional consideration is recommended, then, upon agreement between the Governments of Canada and of the Province following the submission of such report, the said Governments will respectively introduce the legislation necessary to give effect to such agreement. 30

RECORDS.

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25. Canada will, after the coming into force of this agreement, deliver to the Province from time to time at the request of the Province the originals or complete copies of all records in any department of the Government of Canada relating exclusively to dealings with Crown lands, mines and minerals, and royalties derived therefrom within the Province, and will give to the Province access to all other records, documents or entries relating to any such dealings and permit to be copied by the Province any of the documents

required by it for the effective administration of the Crown lands, mines, minerals and royalties. Documents.

AMENDMENT OF AGREEMENT.

26. The foregoing provisions of this agreement may be varied by agreement confirmed by concurrent statutes of the Parliament of Canada and the Legislature of the Province.

RESERVATION OF RIGHTS.

27. This agreement is signed on behalf of the Province with the reservation on its part that neither the execution thereof nor any statute confirming the same shall affect or prejudice any right the Province may now have to call into question the legislative competence of the Parliament of Canada to enact certain sections of the *Saskatchewan Act* and the *Dominion Lands Acts*.

WHEN AGREEMENT COMES INTO FORCE.

28. This agreement is made subject to its being approved by the Parliament of Canada and by the Legislature of the Province of Saskatchewan, and shall take effect on the first day of the calendar month beginning next after the day upon which His Majesty gives His Assent to an Act of the Parliament of the United Kingdom of Great Britain and Northern Ireland confirming the same.

In witness whereof the Honourable Ernest Lapointe, Minister of Justice, and the Honourable Charles Stewart, Minister of the Interior, have hereunto set their hands on behalf of the Dominion of Canada, and the Honourable James Thomas Milton Anderson, Premier and Minister of Education of the Province, and the Honourable Murdoch Alexander MacPherson, Attorney-General thereof, have hereunto set their hands on behalf of the Province of Saskatchewan.

Signed on behalf of the Government of Canada, by
 the Honourable Ernest Lapointe, Minister of
 Justice, and the Honourable Charles Stewart,
 Minister of the Interior, in the presence of
 O. M. BIGGAR

ERNEST LAPOINTE.

CHAS. STEWART.

Signed on behalf of the Province of Saskatchewan
 by the Honourable James Thomas Milton
 Anderson, Premier and Minister of Education,
 and the Honourable Murdoch Alexander
 MacPherson, Attorney-General, in the presence
 of

J. T. M. ANDERSON.

M. A. MACPHERSON.

JAS. F. BRYANT
 R. STIPE

No. 7.
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 Province of
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Documents.

No. 8.

No. 8.
The British
North
America
Act, 1930,
Chapter 26.

The British North America Act, 1930 (20 & 21 Geo. V. (Imp.) Ch. 26.)

CHAPTER 26.

An Act to confirm and give effect to certain agreements entered into between the Government of the Dominion of Canada and the Governments of the Provinces of Manitoba, British Columbia, Alberta and Saskatchewan respectively. (10th July, 1930.)

Whereas the agreements set out in the Schedule to this Act were entered into between the Government of the Dominion of Canada and the Governments of the Provinces of Manitoba, British Columbia, Alberta and Saskatchewan respectively subject, however, in each case to approval by the Parliament of Canada and the Legislature of the Province to which the agreement relates and also to confirmation by the Parliament of the United Kingdom :

And whereas each of the said agreements has been duly approved by the Parliament of Canada and by the Legislature of the Province to which it relates :

And whereas, after the execution of the said agreement relating to the Province of Alberta, it was agreed between the parties concerned, subject to such approval and confirmation as aforesaid, that the said Province should, in addition to the rights accruing to it under the said agreement as originally executed, be entitled to such further rights, if any, with respect to the subject matter of the said agreement as were required to be vested in the Province in order that it might enjoy rights equal to those which might be conferred upon or reserved to the Province of Saskatchewan under any agreement upon a like subject matter thereafter approved and confirmed in the manner aforesaid, and provision in that behalf was accordingly made by the Parliament of Canada and the Legislature of the Province of Alberta when approving the said agreement :

And whereas the Senate and Commons of Canada in Parliament assembled have submitted an address to His Majesty praying that His Majesty may graciously be pleased to give his consent to the submission of a measure to the Parliament of the United Kingdom for the confirmation of the said agreements :

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. The agreements set out in the Schedule to this Act are hereby confirmed and shall have the force of law notwithstanding anything in the British North America Act, 1867, or any Act amending the same, or any Act of Parliament of Canada, or in any Order in Council or terms or conditions of union made or approved under any such Act as aforesaid.

2. The agreement relating to the Province of Alberta which is confirmed by this Act shall be construed and have effect for all purposes as if it contained a provision to the following effect, namely, that the said Province shall, in addition to the rights accruing to it under the said agreement as originally executed, be entitled to such further rights, if any, with respect to the subject matter of the said agreement as are required to be vested in the Province in order that it may enjoy rights equal to those conferred upon, or reserved to, the Province of Saskatchewan under the agreement relating to that Province which is confirmed by this Act.

Documents.
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No. 8.
The British
North
America
Act, 1930,
Chapter 26
—continued.

10 3. This Act may be cited as the British North America Act, 1930, and the British North America Acts, 1867 to 1916, and this Act may be cited together as the British North America Acts, 1867 to 1930.

SCHEDULE.

Agreements between the Dominion and :—

1. *Manitoba*.—Memorandum of Agreement, 14th December, 1929, with accompanying Agreement between Canada, Ontario and Manitoba, dated November 15th, 1922;
2. *Alberta*.—Memorandum of Agreement, 14th December, 1929, with Schedule thereto;
- 20 3. *Saskatchewan*.—Memorandum of Agreement, 20th March, 1930;
4. *British Columbia*.—Memorandum of Agreement, 20th February, 1930, with Schedules 1 and 2 appended thereto.

No. 9.

The Alberta Natural Resources Act No. 2, Chapter 15 of the Statutes of Canada, 1931.

An Act to amend The Alberta Natural Resources Act
[Assented to 3rd August, 1931.]

- 1930, c. 3. His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—
- 30 Short title. **1.** This Act may be cited as *The Alberta Natural Resources Act, No. 2*, and *The Alberta Natural Resources Act*, chapter three of the statutes of 1930 (first session), and this Act may be cited together as *The Alberta Natural Resources Acts*.
- Agreement confirmed. **2.** The agreement set out in the schedule hereto is hereby confirmed and shall take effect according to its terms.

No. 9.
The Alberta
Natural
Resources
Act No. 2,
Statutes of
Canada,
1931,
Chapter 15.

Documents.

No. 9.
The Alberta
Natural
Resources
Act No. 2,
Statutes of
Canada,
1931,
Chapter 15
—continued.

SCHEDULE.

MEMORANDUM OF AGREEMENT.

Made this 29th day of July, 1930

BETWEEN

THE GOVERNMENT OF THE DOMINION OF CANADA, represented herein by the
Honourable Charles Stewart, Minister of the Interior,

Of the first part;

AND

THE GOVERNMENT OF THE PROVINCE OF ALBERTA, represented herein by
the Honourable John Edward Brownlee, Premier of Alberta,

10

Of the second part.

Whereas by paragraph 24 of the agreement made between the parties hereto on the 14th day of December, 1929, it was agreed that the provisions of the said agreement might be varied by agreement confirmed by concurrent statutes of the Parliament of Canada and the Legislature of the Province;

And Whereas it was further provided by certain clauses of the said agreement, more particularly paragraphs 1, 6, 8, 9, 18, 20, 21 and 23, that the relations of the parties thereto should be altered as in the said agreement specified from and after the date of the coming into force thereof, and the date upon which it was then contemplated that it should come into force, as defined by paragraph 25, has now been ascertained as being the 1st day of August, 1930;

And Whereas the Government of the Province has requested that the presently existing powers and rights of each of the parties should continue without alteration until the 1st day of October, 1930, and the parties hereto have agreed accordingly.

Now therefore this agreement witnesseth that :

1. Notwithstanding anything in the said agreement contained, any expression therein contained which defines a date by reference to which the powers or rights of either of the parties are to be altered shall be read as referring to the 1st day of October, 1930, instead of the 1st day of August in that year.

2. The Government of Canada will recommend to Parliament and the Government of the Province of Alberta will recommend to the Legislature of the said Province such legislation as may be necessary to give effect to this agreement.

In witness whereof the Honourable Charles Stewart, Minister of the Interior, has hereunto set his hand on behalf of the Dominion of Canada,

and the Honourable John Edward Brownlee, Premier of Alberta, has hereunto set his hand on behalf of the said Province. Documents.

Signed on behalf of the Government of Canada by the Honourable Charles Stewart, Minister of the Interior, in the presence of W. W. CORY. CHAS. STEWART.

Signed on behalf of the Province of Alberta by the Honourable John Edward Brownlee, Premier of the said Province, in the presence of E. A. BROWN. J. E. BROWNLEE.

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No. 9. The Alberta Natural Resources Act No. 2, Statutes of Canada, 1931, Chapter 15 —continued.

No. 10.

The Saskatchewan Natural Resources Act No. 2. Chapter 51 of the Statutes of Canada, 1931.

No. 10. The Saskatchewan Natural Resources Act No. 2, Statutes of Canada, 1931, Chapter 51.

An Act to amend The Saskatchewan Natural Resources Act [Assented to 3rd August, 1931.]

1930, c. 41. HIS MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title. 1. This Act may be cited as The Saskatchewan Natural Resources Act, No. 2, and The Saskatchewan Natural Resources Act, chapter forty-one of the statutes of 1930 (first session), and this Act may be cited together as The Saskatchewan Natural Resources Acts.

20

Agreement confirmed. 2. The agreement set out in the schedule hereto is hereby confirmed and shall take effect according to its terms.

SCHEDULE.

MEMORANDUM OF AGREEMENT

Made this 7th day of August, 1930.

BETWEEN

30 THE GOVERNMENT OF THE DOMINION OF CANADA, represented herein by the Honourable Charles Stewart, Minister of the Interior, Of the first part,

AND

THE GOVERNMENT OF THE PROVINCE OF SASKATCHEWAN, represented herein by the Honourable James Thomas Milton Anderson, Premier of Saskatchewan,

Of the second part.

Whereas by paragraph 26 of the agreement made between the parties hereto on the 20th day of March, 1930, it was agreed that the provisions

Documents. of the said agreement might be varied by agreement confirmed by concurrent statutes of the Parliament of Canada and the Legislature of the Province;

No. 10.
The Sas-
katchewan
Natural
Resources
Act No. 2,
Statutes of
Canada,
1931,
Chapter 51
—continued.

And whereas it was further provided by certain clauses of the said agreement, more particularly paragraphs 1, 6, 8, 9, 19, 21, 22 and 25, that the relations of the parties thereto should be altered as in the said agreement specified from and after the date of the coming into force thereof, and the date upon which it was then contemplated that it should come into force, as defined by paragraph 28, has now been ascertained as being the 1st day of August, 1930;

10

And whereas the Government of the Province has requested that the presently existing powers and rights of each of the parties should continue without alteration until the 1st day of October, 1930, and the parties hereto have agreed accordingly: Now therefore this agreement witnesseth that:

1. Notwithstanding anything in the said agreement contained, any expression therein contained which defines a date by reference to which the powers or rights of either of the parties are to be altered shall be read as referring to the 1st day of October, 1930, instead of to the 1st day of August in that year.

20

2. The Government of Canada will recommend to Parliament and the Government of the Province of Saskatchewan will recommend to the Legislature of the said Province such legislation as may be necessary to give effect to this agreement.

In Witness Whereof the Honourable Charles Stewart, Minister of the Interior, has hereunto set his hand on behalf of the Dominion of Canada, and the Honourable James Thomas Milton Anderson, Premier of Saskatchewan, has hereunto set his hand on behalf of the said Province.

Signed on behalf of the Government of Canada
by the Honourable Charles Stewart, Minister of
the Interior, in the presence of
W. J. F. PRATT.

CHAS. STEWART.

30

Signed on behalf of the Province of Saskatchewan
by the Honourable James Thomas Milton
Anderson, Premier of the said Province, in the
presence of

J. T. M. ANDERSON.

W. W. CORY.

No. 3.—Typical Form of Permit to Cut Timber on Government Lands.

(See over.)

Typical form of Permit to Cut Timber on Government Lands.

Documents.

No. 3.

Typical form of permit to cut timber on Government lands.

Timber permit form to meet the ordinary requirements of a settler (to be used in connection with homesteads, public works, schools, religious institutions, mine prospecting, etc.)



No 16481

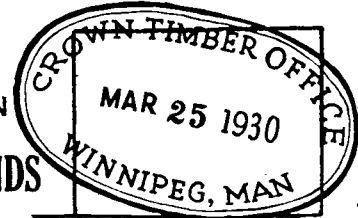
Will

PULPWOOD CUT UNDER THIS PERMIT CANNOT BE EXPORTED

DEPARTMENT OF THE INTERIOR

DOMINION LANDS ADMINISTRATION

PERMIT TO CUT TIMBER ON DOMINION LANDS



WINNIPEG

I, the undersigned Agent of Dominion Lands for the District, by virtue of power vested in me by the Minister of the Interior, do hereby authorize Mr. *William Birch* of *East Brantford* under the Dominion Timber Regulations as provided by Order in Council to cut and take for his own use, ~~but not~~ for the purpose of barter or sale, from *SW* Section *21* Township *7* Range *141E* of *1st* Meridian, the following timber: *(His homestead)*

56 cords spruce pulpwood
This Permit is issued in consideration of the sum of *Fifty seven* Dollars being Dues *Fifty six Dollars* and office fee, the receipt whereof is hereby acknowledged and the fulfilment by the permittee of the following conditions:—

1st. That he shall make on the back hereof, before any person duly qualified to administer an oath, a sworn return of the timber taken by him from Dominion Lands, and forward the Permit to the Agent of Dominion Lands at **WINNIPEG** on or before the 30th day of April next.

2nd. That he shall restrict his cutting to the quantity and limits herein set forth.

3rd. That he shall conform to the conditions, terms and requirements specified in this Permit, and also to the provisions of the Dominion Timber Regulations, any breach of which will subject the offender to all the pains and penalties in that behalf prescribed by the Dominion Lands Act.

Dated at **WINNIPEG** this *25th* day of *March* 19 *30*

J. Tod
[Signature]
Agent of Dominion Lands
CROWN TIMBER AGENT

No timber upon an island in lake or river may be cut under this permit. This permit must be handed to the Mill man if lumber is sawn. Application for patent will be held up so long as this permit is outstanding and excess dues are not paid. No new permit will be issued till this permit is returned with affidavit completed. The permittee shall cut up the whole of the trees felled in such a way that there shall be no waste, and to prevent the spread of prairie or bush fires, the refuse (i.e. the tops and branches unfit either for rails or firewood) shall be lopped off so that they will lie flat on the ground.

THIS PERMIT EXPIRES APRIL 30th, 1930 AND SHOULD BE RETURNED TO THE AGENT PROMPTLY

NOTICE.—This Permit becomes inoperative in the event of the land being homesteaded, purchased, or otherwise disposed of before the expiration of the term for which it is granted

Dominion of Canada

AFFIDAVIT

Province of..... I, Wm Birch, Sworn Statement of Timber Cut
 To Wit: 7 of Section 104 of 104 Meridian
 Township 48 Range 104 of 104 Meridian
 make oath and say:—That I am the person named in the within permit and that all the timber
 I have cut or caused to be cut or taken off any Dominion Lands since May 1st, 19....., to the
 present date is as follows:—

feet Board Measure sawn lumber other than poplar	Prices to be filled in by Agent
feet Board Measure sawn lumber, poplar	@ c. = \$
cords of green wood, poplar	@ c. = \$
cords of dry wood, poplar	@ c. = \$
cords of green wood other than poplar	@ c. = \$
cords of dry wood other than poplar	@ c. = \$
fence posts not exceeding 7 ft. long and 5 in. at butt end	@ c. = \$
roof poles	@ c. = \$
poplar rails not exceeding 5 in. at the top end	@ c. = \$
lineal feet poplar building logs not exceeding 12 in. at butt end	@ c. = \$
lineal feet spruce, tamarack, pine building logs not exceeding 12 in. at butt end	@ c. = \$
railway ties, 8 ft., No. 1 and No. 2	@ c. = \$
railway ties, 8 ft., No. 3 and cull	@ c. = \$
cords lath bolts	@ c. = \$
lineal feet mining timber	@ c. = \$

That I have utilized all the timber in the trees felled fit for manufacture. That I have lopped the top branches of the trees felled so that they lie flat on the ground ~~and further that all the above mentioned timber has been or will be used on my own land, viz. Sec. 104, Twp. 48, R. 104.~~

~~M. and no portion has been or will be bartered away or sold. So help me God.~~

SWORN before me at East Brantford
 This 17 day of Oct 1931
 Signature Wm Birch
 Title Timber Inspector
 (Signature of Permittee)

Total.....\$ 1.50
 If the holder of this permit has an entry on Dominion Lands he will please note that after permit has expired application for patent will be held up unless said permit is returned and excess dues, if any, are paid thereon. No new permit will be issued until this one is returned with the affidavit completed. 1.50

Documents.
 No. 3.
 Typical form of permit to cut timber on Government lands
 —continued.

In the Privy Council.

No. 36 of 1934.

ON APPEAL FROM THE SUPREME COURT
OF CANADA.

IN THE MATTER of a Reference concerning refunds
of dues paid under the terms of Section 47 (F)
of the Timber Regulations in Manitoba, British
Columbia, Saskatchewan and Alberta.

BETWEEN

THE ATTORNEY GENERAL OF MANITOBA,
THE ATTORNEY GENERAL OF SASKAT-
CHEWAN, THE ATTORNEY GENERAL OF
ALBERTA AND THE ATTORNEY GENERAL
OF BRITISH COLUMBIA - *Appellants*

AND

THE ATTORNEY GENERAL OF CANADA
Respondent.

RECORD OF PROCEEDINGS.

GARD, LYELL & CO.,
47, GRESHAM STREET,
LONDON, E.C. 2;

~~BLAKE & REDDEN,~~

~~17, Victoria Street, S.W. 1,~~

For the Appellants—The Attorneys General of Manitoba,
Saskatchewan and Alberta.

GARD LYELL & CO.,

47, Gresham Street, E.C.2,

For the Appellant—The Attorney General of British
Columbia.

CHARLES RUSSELL & CO.,

37, Norfolk Street, Strand, W.C.2,

For the Respondent—The Attorney General of Canada.