

dealing with water-power, and the possibility of taking away rights from these people who have not complied with the requirements of the act.... With respect to the taking of property from people who have not complied with the necessary requirements under which they got them, and reference to which was made in the portion on the table on water-power, the position is this. Some years ago there were timber leases on which the people who had rights had to erect mills. They did not erect mills, and the government took action for cancellation of licenses. But the government had accepted rentals. Upon action being taken it was ultimately decided by the Privy Council on appeal in the case of the Newfoundland Government vs. Jardine ... that the condition had been broken, but if after the breach the government had accepted the rent, then the government had waived its right to cancel the leases, and the licenses must continue on that understanding as long as the rents were paid and in good standing.¹

In respect to expropriation of property, I am answering from the judgement in Dillon and others vs. the St. John's Housing Corporation.² That judgement traces the history and powers of Commission of Government; it is excellent reading....

The judgement is very long, gentlemen, but you understand the situation. At that time it was being argued by counsel for the plaintiffs that the Housing Corporation had no right to expropriate the land where the Housing Corporation development is now situated without the consent of the British Parliament through one of the Secretaries of State, as the property being expropriated was not the property of British subjects residing in the colony. I trust, Mr. Harrington, that makes the point clear?

Mr. Harrington It does and it does not.

Mr. Smallwood I wonder if Mr. Higgins could tell us were there royal instructions to the Governor of that same kind under the old Letters Patent?

Mr. Higgins I believe there were.

Mr. Smallwood You mean that even under the

kind of government we had before Commission of Government, the Governor had his instructions from the King as to what he might and might not do? He was instructed that he was not to sign or agree to any act of the government that would confiscate the property of any person in Newfoundland?

Mr. Higgins That is my impression. I will let you know the proper answer.

Mr. Smallwood Sitting beside you is the Chairman of the National Convention, who was once Solicitor General of Newfoundland, and as such once instrumental in serving quite a number of writs on the owners of timber lands, who had been granted those timber lands on condition that they would develop them. They had not developed them, I believe, and they had not met the conditions, and he issued writs running up to a value of millions of dollars, one of the biggest actions ever taken in the history of Newfoundland. I was wondering if we could provoke him — it was a case where a lot of natural resources had been granted to certain individuals on certain conditions. They did not develop them, and he decided to get them back for the Crown. The government backed him and their licenses were cancelled.³ It may not be quite the same kind of case, but if it were, there is a case where the government could get them back, and here's another case where we could not get them back.

Mr. Chairman I can only speak from memory and my recollection is that the owner of the property was a limited company which was domiciled in Newfoundland. I believe it was the Reid Newfoundland Company, so that any Letters Patent or Instructions to the Governor would have no application. I have also to add that while those writs were in fact issued the leases were not cancelled. That was prior to the case which went to the Privy Council. Beyond that I cannot go, because I would be talking politics, and I cannot talk politics in this Chair.

Mr. Higgins I trust, Mr. Smallwood, that is sufficient answer.

Mr. Ashbourne Regarding the matter of water-

¹Attorney General and Minister of Agriculture and Mines vs. Jardine and Martin, 1930, *Decisions of the Supreme Court of Newfoundland, 1927-1931*, pp. 446-484.

²Dillon vs. Canning and the St. John's Housing Corporation, 1946, *Decisions of the Supreme Court of Newfoundland, 1941-1946*, pp. 386-416.

³Attorney General and Minister of Agriculture and Mines vs. Mines and Forests (Newfoundland) Ltd. et al., July 1931. *Decisions of the Supreme Court of Newfoundland, 1927-1931*, pp. 446-484.