

had pleaded payment of both the notes, if he did not prove the whole, the verdict must be against him. I think the plea good.

*Per Cur.*—Judgment for the defendant.

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DOE DEM. SHELDON V. RAMSAY ET AL.

*Grant of Governor under his seal-at-arms—Power of Chief of an Indian tribe to act as an agent for the tribe—Power of Commissioners of forfeited estates—59 Geo. III. ch. 12—Inquisition void for want of certainty—Description in conveyance—Meaning of phrase “more or less.”*

A grant of lands, in 1784, by the then Governor of the Province of Quebec, &c., under his *seal-at-arms*, to the Mohawk Indians and others, conveyed no legal estate; first, as not being by letters patent under the great seal; secondly, for want of a grantee or grantees capable of holding.

*Held* also, that the mere fact of a chief of an Indian tribe assuming to act as a duly authorized agent, in the name and on behalf of the tribe, shewed no power in him so to act; and therefore, that a lease, signed by him as agent, &c., conveyed nothing.

And consequently, that such lessee had no estate, which, on his being subsequently attainted of high treason, could be forfeited to the Crown, and vest in the commissioners of forfeited estates, under 59 Geo. III. ch. 12.

Though by the 33 Hen. VIII. ch. 20, the Crown, in case of attainder for high treason, would be deemed in actual possession without any inquisition of office, yet such lands only would vest in the commissioners under 59 Geo. III. ch. 12, as should be found by an inquisition to be vested in the Crown, and therefore no more land could possibly pass by a deed from the commissioners than the inquisition had found the traitor seized of.

And *held*, that the inquisition could not support the conveyance which the commissioners made; for it referred to nothing which could possibly supply proof of identity, and the commissioners were not warranted in going beyond the inquisition and, *semble*, that the inquisition was void for want of certainty.

The defendants—James Ramsay, Hector Dickie, Mary Kerr, and John Cleator—defended for a tract of land on the south side of the Grand River, giving a description of it by metes and bounds, not expressing in what township it is, nor what quantity of lands the lines embrace.

The plaintiff in his declaration sued for land in the township of Brantford, in the county of Wentworth, and described it as “being composed of all that certain tract of Indian lands on the south-west branch of the Grand River, in the township of Brantford, beginning at the white oak tree standing on the bank of the said river, on the south side of said River, above the Indian Mill, near a hut formerly known by the name of Culver’s Hut, on the bank of said river, a few rods below said hut, said white oak tree charred on four sides, and four sides hacked, said tree standing two rods from said river, or thereabouts; and running

south 10 degrees west 16 chains, to a stake marked B. M. ; thence north 80 degrees, west 38 chains, 80 links : thence north 10 degrees east, to the bank of said river ; thence along the bank of said river to the first mentioned boundary, including all privileges of the waters of the said river in front of the said lot."

At the trial of this ejectment, at Hamilton, before Robinson, C. J., at the last assizes, the lessor of the plaintiff claimed title under a sale made to him on the 9th July, 1832, by the commissioner of forfeited estates, under the statute of Upper Canada, 59 Geo. III. ch. 12. It was shewn that one Mallory had been, upon indictment and outlawry thereon, attainted of high treason, committed by him in the year 1813, in giving aid to the enemy during the war then carried on between Great Britain and the United States of America. And upon an inquest of office which followed his attainder, it was found and returned by the jury, that at the time of his committing the high treason, he was seized of certain estates mentioned in the inquisition, among which were two tracts thus described : " Also a lease of a certain tract of the Indian lands, containing about 1,400 acres, joining the township of Brantford, leased to him for the term of 999 years ; and another lease for the same term, of certain other Indian lands on the south-west bank of the Grand River, containing about sixty acres, more or less ;" and that he had no other lands to their knowledge.

It was about the last of these two tracts, described as containing "about sixty acres, more or less," that the dispute in this action has arisen.

The inquisition bore date 14th January, 58 Geo. III.

A verdict was given for the plaintiff.

*Connor Q. C.*, and *Galt* with him, in support of a rule *nisi* to enter a non-suit ; or for a new trial without costs, on the evidence and for admission of evidence after the plaintiff's case closed—objected to the inquisition having been admitted after the plaintiff's case was closed. The evidence was clear as to the quantity of land it was intended should pass—1 Sug. V. & P. ch. 7, sec. 3 ; *Day v. Finn (a)*. The

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(a) Owen, 133.

inquisition is void for uncertainty; and should have set out metes and bounds—Fullen v. Birkbeak (*a*). The commissioners could only make a deed such as the title on which they were acting would warrant; they had therefore no right to incorporate this description in their deed. A deed cannot convey 420 acres under an inquisition which only forfeited 60.

Such a grant from the crown would have been void—2 Bl. Com. 347; Doddington's case (*b*); Dowtie's case (*c*). There is no provision in the statute 59 Geo. III. ch. 12 for assigning a chattel interest in law.

*Freeman*, contra—The commissioners must be presumed to have exercised their authority properly—Taylor on Ev. 113, 119; Doe Hopley v. Young (*d*). He contended that Brant's lease to Mallory, coupled with the inquisition, made that certain which before was doubtful—“*Id certum est quod certum reddi potest*,” and therefore the inquisition not void for uncertainty; and as to not producing the inquisition, he said he did not consider it necessary, as the commissioner's deed recites it, and shews how the inquisition described the land.

The statutes and facts bearing on the points in dispute are fully set out in the judgment of the Chief Justice.

ROBINSON, C. J.—By the statute 59 Geo. III. ch. 12, the Government was authorized to appoint commissioners, “in whom all the real estates which then were or thereafter might become vested in his Majesty by the attainder of persons convicted of high treason, committed during the said late war, should be vested for the purposes mentioned in the act.”

And in order that all such estates might be “the better known, described and ascertained, and the rents, issues, and profits thereof recovered for the use of his Majesty, and that due examination might be taken and satisfactorily made of all just and lawful claims to or upon such estates, the act provides that the Clerk of the Crown shall deliver to the commissioners an extract, certified under the seal of

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(a) Carthew, 453.

(b) 2 Rep. 33.

(c) 3 Rep. 10.

(d) 8 Q. B. 63.

the Court of Queen's Bench of all inquisitions, whereby any real or personal estate of any kind whatever shall have been returned as forfeited to his Majesty by the attainder of any person of any high treason, as aforesaid : in which extracts shall be stated the names, additions, and late places of abode of the person attainted ; the species of treason of which, and the respective times, places and courts, when and where they were so attainted ; *and also the real estates, chattels, real or personal, debts, &c., which in the said inquisitions are found to be forfeited by such attainder ;* and that the commissioners shall enter these extracts in a book or register to be kept by them ; an extract from which book, signed by any two of the commissioners, shall be sufficient evidence, in any court, of the matter therein certified."

And, to the end that all the estates and interest vested in the commissioners under the act may be duly published, so as all persons having interest therein may have notice thereof, in such manner as they may enter their claims upon the same, as provided by the act, it was enacted, "that the commissioners shall cause this register to be open to public inspection without fee, and transmit to the special receiver, to be appointed under the act, an authentic copy of the register."

It is also provided that the commissioners shall send to the clerk of the peace of the district in which any of the lands forfeited shall be a duplicate of every such entry to be affixed on the door of the court-house, and to be inserted in a book to be kept by the clerk of the peace.

Provision is then made for receiving, hearing, or determining the claims of any persons having or claiming any estate, right, title, or interest into or out of any of the said estates vested or to be vested in the commissioners. And it is enacted, "that all and every the estate and interests which shall be entered in the register to be kept by the commissioners according to the directions of the act, to or upon which no claim shall be entered within the time and in the manner prescribed, shall be deemed or taken against all persons, and to all intents and purposes to be vested in the commissioners in virtue of the act."

Then by the 13th clause of the statute, the commissioners are directed to sell all and singular the real estate and chattels vested or to be vested in them by the act, by public auction, according to the best of their judgment; to give ninety days' public notice of the time of place or sale, and of the several particulars then and there to be sold; and to cause an entry to be made in their book of all and every the real and personal estate so sold, and of the buyers' names, and prices paid, &c.; and, upon payment of the purchase-money to the commissioners, to execute deeds of bargain and sale for such real estates as shall be in such manner sold to the respective purchasers thereof; which deeds are required to be registered as other conveyances of lands in Upper Canada.

It was proved on the trial that the extract of the inquisition entered in the commissioners' book, and of which a copy was delivered out by their clerk as the act directs, corresponded literally with the inquisition as regarded the tract of land respecting which this question arises. The date of entry in their books is first March, 1819, and the land is no otherwise described than thus: "And another lease, for the same term, of certain other Indian lands on the south-west bank of the Grand River, containing about sixty acres, more or less." No township, county, or district is named as being that in which these sixty acres are situated.

It was then proved that on the 9th July, 1823, the commissioners of forfeited estates issued an indenture between themselves of the one part and the present lessor of the plaintiff William B. Sheldon of the other part, in which they recite the statute and their own appointment as commissioners, that Mallory had been attainted of high treason, &c., and that amongst other things "the residue of the demised term of 999 years unexpired and yet to come, of and in all and singular the lands, tenements and hereditaments thereafter described, had by inquest of office been found to be forfeited to his late Majesty, as having been in the seizin of the said Mallory at the time of the committing of the said high treason; that is to say, a certain tract of the Indian lands on the south-west branch of the Grand

River, containing about sixty acres," referring to the record of the conviction and judgment, and to the inquisition. And they recite further, that the said residue of the said demised term of and in the premises aforesaid, in the said county of Haldimand (which county of Haldimand had been nowhere before mentioned, either in the inquisition or extract, or in this deed), having by virtue of the statute become duly vested in the said commissioners, they did, on the 31st day of August, 1820, having given due notice and complied with all the other requisitions of the statute, sell the said residue of the said term of and in the said premises, with the appurtenances, by public auction, to the said William B. Sheldon, he being the highest bidder for the same, according to the provisions of said act, at and for the price or sum of 17*l.* 10*s.* And then their deed witnesses that in consideration of the said sum of 17*l.* 10*s.*, and under and by virtue of the powers and authorities in the said statute contained, they thereby assigned, transferred and set over to the said William B. Sheldon, the present lessor of the plaintiff, his executors, &c., "all and singular the said residue of the said demised term of 999 years unexpired and yet to come, of and in all and singular the said parcel or tract of land situate on the south-west branch of the Grand River as aforesaid, and described in the original lease for the same from Jacob Brant (should be Joseph Brant), agent of the Six Nation Indians, to the said Bonajah Mallory, hereunto annexed, as follows—that is to say, beginning at a white oak tree standing on the bank of said river, on the south side of said river, above the Indian Mill, near a hut formerly known by the name of Culver's Hut, on the bank of said river, a few rods below said hut, said white oak tree charred (should be "blazed") on four sides, and on four sides hacked, said tree standing about two rods from said river or thereabouts; and running south 10 degrees west 16 chains to a stake marked B. M.; thence north 80 degrees west 38 chains 80 links; thence north 10 degrees east to the bank of said river; thence along the banks of said river to the first-mentioned boundary, including all privileges of the waters of said river on the front of

said lot, containing fifty-four acres, be the same more or less."

It will be observed that this description, which found its way into the commissioners' deed, is something quite independent of, and wholly in addition to, anything that appears in the inquisition, or in the commissioners' registered extract; and for all that appears, the sale made by the commissioners, and the public notice that preceded it, contained nothing of this particular description, but were in the same general terms as the inquisition. They ought to have corresponded with that, according to the act, and it is to be presumed therefore that they did.

This particular description by metes and bounds, it will be seen, agrees exactly with the description of the premises described in the declaration, except that it calls the land 54 acres more or less, whereas in the inquisition the tract is called 60 acres more or less. The plaintiff claims in this action all the land which, he says, this particular description, by metes and bounds, contained in the commissioners' deed will embrace. How such a description came to be imported into the deed given by the commissioners was thus explained at the trial: Mallory, upon whose attainder the land had been forfeited, had fled from the country during the war, and it was known in what part of the United States he was residing. Sheldon, sometime after he had made his purchase (the time for any persons making claim to any of the land returned as forfeited by the inquisition having necessarily elapsed before the sale), went to Mallory, and obtained from him, or from his agent, the lease, or a lease under which he represented himself to have held the tract in question; thus taking an assignment of it to himself, which is indorsed on the back of it, and which is signed by one William Mallory, as agent of Bonajah Mallory.

This is dated 21st May, 1822, and he must have produced this lease to the commissioners of forfeited estates, for they have framed their deed according to it in point of description, and it is referred to in their deed as being annexed.

The commissioners no doubt did this from a desire to give to their conveyance greater certainty; and assuming

that this must have been the lease which is referred to in such general and vague terms in the inquisition, although there is a discrepancy between the two in the only thing which looks like certainty in the description given in the inquisition, the latter calling the contents of the tract "about 60 acres," and this lease "about 54 acres,"

At the trial this lease was produced by the lessor of the plaintiff, and he claims to hold according to it.

It is an indenture, made the 25th January, 1805, between the Six Nations Indians, residing on the Grand River, in the Province of Upper Canada, by Joseph Brant, principal chief and agent for the said Six Nations, duly authorized in their name and on their behalf to execute leases of such parts and parcels of their lands as by the said Joseph Brant shall be thought fit to be leased, of the one part, and Bonajah Mallory, of, &c., of the other part; and it recites that on the 25th day of October, 1784, at the city of Quebec, upon the representation of the said Joseph Brant, in behalf of the Six Nations of Indians, to the late General Haldimand, then governor and commander-in-chief of the Province of Quebec, &c., he, the said commander-in-chief, in consideration of the early attachment to the king's cause manifested by the Mohawk Indians, and of the loss of their settlements which they thereby sustained, by an instrument in writing by him subscribed, with his seal-at-arms annexed, and since registered in the Secretary's office of the province of Upper Canada, was pleased to grant, appropriate, and assign to them and such others of the Six Nations as wished to settle in that quarter, six miles deep from each side of the Grand River, at the mouth thereof, and extending in that proportion to the head of the said river, to be enjoyed by them and their posterity forever. And this indenture witnesses, that the said Six Nations of Indians, by Joseph Brant, their agent, in consideration of a peppercorn rent, demised to Mallory, his executors, administrators, and assigns, all that certain parcel or tract of land, being part of the above-described territory, granted by the said commander-in-chief to the said Six Nations, beginning, &c., describing the land precisely as in the declaration in this



ejectment, and in the commissioners' deed afterwards made, and stating the tract to contain fifty-four acres, more or less; to hold for 999 years, with covenant of the Six Nations Indians, by their agent, for quiet enjoyment. This instrument is signed by "Joseph Brant, agent," and by Mallory, and they both sealed it.

The commissioners' deed and this lease being produced, the chief contest at the trial was about the extent of the tract conveyed by the commissioners. Their deed, adopting the description contained in Brant's lease, professed to convey about fifty-four or sixty acres; but the plaintiff, by the effect which he desires to give to the description, would make it embrace about four hundred and twenty acres.