Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Falkland Islands Company v. *Regina, from the Falkland Islands: delivered 23rd July*, 1864.

Present:

LORD KINGSDOWN.
SIR EDWARD RYAN.
MASTER OF THE ROLLS.

THE question referred by Her Majesty to their Lordships is not as is stated in the special case, whether, having reference to the right of the Appellants with regard to the wild cattle, the proceedings and order of the Governor and of the Chief or Stipendiary Magistrate referred to in the special case are correct in point of law, but "whether under the freehold or leasehold grants, or either of them, made to the Falkland Islands Company, as set forth in the petition for leave to appeal, the Company and their agents are entitled to kill and destroy wild cattle found on the lands the subject of this grant."

Prior to the year 1846 the whole of the soil of the Falkland Islands, and the absolute possession and dominion of all wild cattle and wild stock upon those islands, were the sole and exclusive property of Her Majesty, and such property and dominion still remain vested in Her Majesty, except so far as she may have granted any portion of this right to others.

On behalf of the Appellants, the Falkland Islands Company, it is contended that Her Majesty has granted to them the exclusive right of killing wild cattle which may be found on the land sold by the Crown to the Appellants, and also on the land demised by the Crown to the Appellants during the period of their lease.

In 1859 and 1860 grants of land of 160 acres each were made by the Crown to the Falkland Islands Company in fee, with a proviso securing to the Crown the right of re-entering on the lands for the purpose of making roads, canals, and other works of public utility, the right to cut timber, and to search for and carry away stones or other materials which might be required for making or keeping such works in repair, and also reserving to the Crown all mines of gold, silver, precious metals, and coal, with full liberty to search for and carry away the same. There is no other reservation in the grant. Incidental to the grant of the land was granted a license or lease to depasture stock on 10,000 acres, the limits of which were strictly defined in the instrument, for a term of twenty years, in consideration of an annual rent of 10*l.*, subject to the same reservation as the grant of the land in fee-simple.

Their Lordships are of opinion, that though this is entitled a licence to depasture stock, it is in law a demise of the land therein contained, to which the ordinary rights of a lessee attach, and consequently that the land thereby demised, subject to the rights of the Crown and the performance of the conditions contained in the licence, belong to the Falkland Islands Company as their exclusive property during the period of the lease.

It is not disputed that the Law prevailing in the Falkland Islands must be considered to be the Common Law of England, modified only by such statutes as apply to these Islands.

Their Lordships are also of opinion that by the Common Law of England the grant of the land in fee simple of the lots of 160 acres, and the demise of the lots of 10,000 acres, confers upon the grantees and lessees thereof the exclusive right of killing and taking all game, beasts of chase, and animals which are properly *feræ naturæ* which may at any time be upon their land, so long as such animals may be and remain upon the land so granted or demised.

It is contended on the part of the Crown that the wild cattle are not animals that come within this description; that it is matter of history that the Falkland Islands when first taken possession of on behalf of Her Majesty contained no such animals as wild cattle, horses, swine, or goats; and that these animals, which were not indigenous in the island, have

been introduced by Her Majesty's subjects into the island; that some which escaped or were turned loose, have bred and have increased so prolifically as to have overrun these islands, but that they are only wild in the sense that they are not restrained by fences and boundaries; that such being the origin and nature of the animals they cannot properly be termed animals *feræ naturæ*.

Their Lordships consider that it is not necessary for them to determine this question in the present case, because it appears to them that so far as regards any question between the Appellants and the Crown, this question was determined between them on settling the terms of the Agreement entered into between the Secretary of State for the Colonies and the Appellants, which ended in a grant made to them by the Crown on the 8th September, 1859. Her Majesty's Emigration Commissioners were empowered to enter into the negotiation with the Falkland Islands Company, and to settle the terms of the grant on behalf of Her Majesty, and in doing so the Emigration Commissioners agreed with the Falkland Islands Company that the wild cattle should be treated as animals *feræ naturæ*, in which no property could be acquired until killed or taken.

The Falkland Islands Company proposed that the grant should be made in these words:—

"The Governor of the said Falkland Islands shall grant to the said Company all that peninsula, &c., together with all live stock upon that peninsula, and upon the Islands aforesaid."

In reply to this, the Emigration Commissioners stated that the words—

"'Together with all live stock,' &c., would imply a *property* on the part of the Company in any wild cattle which might be on their land. Now the words in the heads of Agreement inclosed in the Colonial Office letter to you of the 23rd August, are 'the grant to carry the right to kill and tame wild cattle within the granted territory.' The Commissioners understand the intention of the Secretary of State to have been to allow the Company the privilege of hunting and killing wild cattle which might be at any time on their land, but not to interfere with the general principle that wild cattle being *feræ naturæ*, no property in them can be acquired. The alteration should therefore run, 'together with the power to hunt, kill, or tame all live stock,' &c."

This was assented to on the part of the Company, and the words suggested by the Emigration Commissioners were accordingly adopted.

Their Lordships therefore are of opinion that this must be treated as one of the terms of basis of the negotiation on the faith of which both the subsequent grants and licenses to depasture cattle were applied for and made, and that it consequently follows that where the grants were made by the Crown to the Company, it must be taken to have been treated on both sides that the wild cattle were to be considered as animals *feræ naturæ*, in the absence of any expression or reservation to the contrary. If this be correct, then their Lordships are of opinion that the Ordinance passed by the Local Legislature in 1853 does not affect the right of the Appellants. The 37th section of that Ordinance did not prevent Her Majesty from granting plots of land on any terms that might be thought fit; and the words "without lawful cause," and "unlawfully," which are introduced into that section, seem to have been expressly inserted for the purpose of saving the rights of any persons who might be so entitled.

Their Lordships therefore are of opinion that in the absence of any reservation to the Crown of any right of killing or taking wild cattle on the lands granted or demised, it must be held that the right of killing and taking such cattle while on the lands granted or demised is included in such grant and demise, and is not prohibited by the 37th section of the Ordinance of 1853. And they will humbly recommend Her Majesty accordingly.