

Ont.] TRUSTS AND GUARANTEE CO. v. HART. [Nov. 8, 1902.

*Gift—Confidential relations—Evidence—Parent and child—Public policy—Principal and agent.*

The principle that where confidential relations exist between donor and donee the gift is, on grounds of public policy presumed to be the effect of those relations, which presumption can only be rebutted by showing that the donor acted under independent advice, does not apply so strongly to gifts from parent to child or from principal to agent. Thus, in case of a gift to the donor's son, for the benefit of the latter's children, when said son had for years acted as manager of his father's business, when he was the only child of the donor having issue, and when the donor, nine years before his death, had evidenced his intention of making the gift by signing a promissory note in favor of the son, by renewing it six years later and by voluntarily paying it before he died, such presumption does not arise.

Judgment of the Court of Appeal, 2 O.L.R. 251, reversing that of the Divisional Court, 31 O.R. 414, affirmed, SEDGEWICK and DAVIES, JJ., dissenting. Appeal dismissed with costs.

*Wallace Nesbitt, K.C., and Young, for appellants. Aylesworth, K.C., and Davidson, for respondents.*

Yukon Terr.] KING v. CHAPPELLE. [Nov. 18, 1902.

*Mining law—Royalties—Dominion Lands Act—Publication of regulations—Renewal of license—Payment of royalties—Voluntary payment—R.S.C. c. 54, ss. 90, 91.*

The Dominion Government, by regulations made under The Dominion Lands Act, may validly reserve a royalty on gold produced by placer mining in the Yukon, though the miner, by his license, has the exclusive right to all the gold mined. TASCHEREAU and SEDGEWICK, JJ., dissenting.

The "exclusive right" given by the license is exclusive only against quartz or hydraulic licenses or owners of surface rights and not against the Crown. TASCHEREAU and SEDGEWICK, JJ., dissenting.

The provision in s. 91 of the Dominion Lands Act that regulations made thereunder shall have effect only after publication for four successive weeks in the Canada Gazette means that the regulations do not come into force on publication in the last of the four successive weeks of the Gazette, but only on the expiration of one week therefrom. Thus where they were published for the fourth time in the issue of September 4th, they were not in force until the 11th and did not affect a license granted on Sept. 9th.

Where regulations provided that failure to pay royalties would forfeit the claim, and a notice to that effect was posted on the claim and served on the licensee, payment by the latter under protest was not a voluntary payment.