JUDGMENT RENDERED

Rights of Laymen and Owners Stated

Important Ruling by Mr. Justice Dugas Pertaining to Lay Agreements.

Mr. Justice Dugas delivered a judgment yesterday of considerable importance, as it fixes the relative rights of laymen and owners of a mining claim. A prerogative that many laymen have always taken unto themselves is the right to disregard entirely or vary the terms of an agreement previously entered into if they found the ground covered by such agreement did not equal their expectations, notwithstanding the covenants solemnly made to work the claim in question in such and such a manner. In the case which has just been decided there was a penalty imposed in the lay agreement by which the laymen were to receive but 25 per cent. of the gross output in the event of their failure to work the claim from rim to rim as agreed. If they fulfilled their agreements they were to receive 50 per cent. According to the evidence they did not work the claim from rim to rim and when the dumps were washed up the owner gave them but 25 per cent., retaining as damages suffered the other 25 per cent. which had their obligations been fulfilled would have been theirs. That proportion amounted to 191¼ ounces, or $3005.60, for which sum suit was brought. The gist of his lordship's decision, which is quite lengthy, is as follows :

"The statement of claim alleges that on the 30th day of October, 1900, the defendant (which I take to be the defendant Monroe) entered into a lay agreement with Samuel C. Smith, E. J. Brady and John McLaughlin, that the said laymen should work a claim owned by the defendant, Monroe, in the Klondike district. Said laymen to receive 50 per cent. of the proceeds of the said claim.

"It appears that Smith assigned to the plaintiff Peter McLaughlin and E. J. Brady, and E. J. Brady afterward to one J. J. Brady. E. J. Brady is now made a defendant for the purposes of this action, though I cannot understand way. The only plaintiffs now are Peter McLaughlin and John McLaughlin, who claim that after they went to work they found that the ground was not as good as they had thought it to be and would have abandoned their work had not the defendant Monroe agreed to vary the terms of the original lay by undertaking to furnish machinery which he afterwards refused to do. They claim that the defendant having been put into possession of the gold produced he returned to them only 25 per cent., whilst they are entitled to 50 per cent. thereof. That is, a further quantity of 191¼ ounces, valued at $16 per ounce at $3005.60.

"I must say that, as I view them, neither the statement of claim (even as amended) nor the statement of defence (as first produced) exactly put the facts before the court and from the record and the amended statement of defence the facts are purely and simply these: That amongst other covenants it was mutually agreed that upon the performance of the covenants by the laymen, and in consideration thereof, the gold or gold dust extracted from the claim and paid over to the owner or his representative in pursuance of the covenants by them both should be applied, divided and apportioned as follows: The laymen shall receive 50 per cent. of all the gold taken out of said ground and shall pay 50 per cent. of the royalty imposed by the government; but if the laymen do not work the said claim to its fullest extent, that is, from rim to rim, as a penalty they are to receive but 25 per cent. of the gold taken out of the said claim and are to pay 25 per cent. of the royalty imposed by the government.

"The agreement contains several covenants which have not been followed no doubt by the original contractors, laymen. For instance, they had no right to assign their interest in the lay without a written agreement; they had no right to rock, and, although this and other facts which have been established, might prove to be very strong against the claim of the plaintiffs under ordinary circumstances, I believe that the defendant Monroe's actions have been such as to establish a waiver in favor of the plaintiffs. At all events, the principle point insisted upon by the defendant Monroe (who is the only one who has appeared) is that the plaintiffs not having worked the said claim from rim to rim are not entitled to more than what they have received, that is 25 per cent. of the gold extracted. I have already declared that although during the work and before the wash-up or clean-up Monroe had somewhat left the laymen under the impression that he would use the value of the other quarter in buying machinery which he would put at their disposal to permit them to work the claim with better advantage, and that this really did give to the laymen a certain encouragement to fulfill their contract, yet, and I didn't see that this in any way bound him legally to do so, I may repeat here what I said verbally at the trial, that laymen generally labor under a false impression when they seem to believe that a contract which they sign is not as much binding for them as for the owner of a claim from which they get their lay, and when it is alleged by the plaintiff that finding that they had been deceived as to the character of the ground, and that they had the intention of not fulfilling their contract on that account, they do not present themselves in the very best of light as suitors before the court. At all events, with this stated, the only point which I reserved, having decided the others, is whether this covenant of reducing to 25 per cent. instead of 50 per cent. the share of the laymen in the output of the mine according to their working the same from rim to rim or not, was a penalty which can not be enforced by this court or a sum fixed as liquidated damages."

Then follows a large number of citations bearing upon the merits and meanings of the respective terms "penalty" and "damages," his lordship concluding that no matter which term is used in the contract the courts are not bound by the words, but have to seek what has been the intention of the parties. A number of dictums from English courts were also quoted showing the distinction between "penalty" and "liquidated damages," Snell on equity being quoted at considerable length. Continuing his lordship said :

"From all these rules, founded upon the dictums of the English courts, I take it that the distinction between a penalty and liquidated damages under such contracts is principally the excess of damages fixed, more particularly when there are several conditions, the non-fulfillment of any one of which would be considered as so trifling as not to injure the party to any extent as that fixed as a penalty or damages. In other words, if a fancy amount is fixed and the payment thereof is imposed, more as a punishment or a means of forcing the obligee to perform his contract without considering what damages the other party might suffer through the non-performance, then this would be a penalty simple, for there it can be conceived that although some damages might be incurred, yet the intention of the parties was not so much to have them paid as to bring the obligee to performance by fear of a fine or penalty. But, in all these cases, and by the rulings above cited, it seems clear that when one of the covenanters is interested in having the covenants perfected and that otherwise he would be a loser, damages so fixed can be considered as liquidated damages and can be recovered.

"In this present case there can be no doubt that the defendant was interested in having his claim worked to its fullest extent according to the contract; being extitled to 50 per cent. of the whole output of gold which the claim, being worked from rim to rim, would give, and this at the expense of the plaintiffs. There is no doubt that if the amount claimed represents one-quarter of what has been worked the defendant would have received a further sum if the whole claim had been turned over as understood. The amount cannot be fixed, but both agreed that there would be damages, and when the plaintiffs accepted to receive but one-quarter instead of one-half of the output if the whole claim was not worked as understood, they fixed themselves their own earnings, and if they wanted to obtain the half they had only to fulfill the conditions of their contract. But the plaintiffs pretend that the interpretation of the contract, according to the defendant's pretention, will work a great injustice toward them. 'The more work,' they say, 'they would have done, the more the defendant would get,' and yet, if it happened that only a small portion of the ground had not been worked according to the contract, then the defendants would get all the advantage thereof and more particularly of that covenant.

"This, in fact, might happen, still the question always remains: Was this intended as a fine or penalty to force the plaintiffs to complete their part of the contract, without any serious interest on the part of the defendants to that effect, or was the defendant really interested in having the contract performed as agreed upon? Can it be said that if not he might be subjected to some serious damage? I think that it cannot be doubted for a moment that all the parties understood that if only a portion of the claim was worked under the lay agreement the defendant would receive less value in gold according to the amount of ground worked. What it would be cannot be ascertained. They had the right to covenant between themselves the amount of damages which the plaintiff might be entitled to claim, as 'liquidated damages' for such a non-performance. I have not the agreement itself before me, but if I remember rightly the time to perform the same had not yet even expired when this action was taken. I cannot see that if the plaintiffs had been willing, although they might have been the losers, they could not have fulfilled their obligations; they have voluntarily entered into that contract, on both sides there was consideration, the defendants by putting at their disposition a claim which must have had some value and permitting them to take their share of its yieldings, they undertaking to give their time and make the necessary expenses in working the same; the contract was mutual, and I consider that it was binding upon both parties."

"Under these conditions I come to the conclusion that the claim of the plaintiffs to have the defendant Monroe to pay them the value of 191¼ ounces of gold, which represents one-quarter of the gross output of the claim, cannot be sustained, and the action against Monroe is dismissed with costs. As far as Brady is in the case as a defendant, it is also dismissed against him but without costs. The counter claim is not entertained and is dismissed without costs."

Necklace Lost.

Washington, April 15.—The $3,000 diamond and pearl necklace which was lost or stolen on a Southern Railway train between Columbia, S. C., and this city on March 8, was the property of Mrs. Harriet S. Blaine-Beale, a daughter of the late James G. Blaine. The police of all the southern cities have been notified to look out for the necklace. The police here made a great mystery of the affair, refusing until today to say who had lost the jewels. In fact the police were not informed as to the identity of the loser by the claim agent of the road until today.

Mrs. Blaine-Beale left here for the south to accompany Miss Alice Roosevelt, the daughter of the President, to Cuba. Mrs. Blaine-Beale was returning to Washington at the time of the loss of the necklace.

According to the information received here the necklace was of magnificent graduated Oriental pearls with seven diamonds, and was presented to Mrs. Blaine-Beale by the Shah of Persia for a wedding present. On the gold clasps of the necklace are engraved the letters "H. S. B."

Mrs. Blaine-Beale carefully stowed the necklace away in the bottom of her travelling bag at Jacksonville. She then entered one of the through vestibuled southern trains for Washington. Upon the arrival of the train at Columbia, S.C., Mrs. Blaine-Beale had occasion to open the bag and saw the necklace. That was the last time she remembers having seen it. Upon arriving at Charleston she opened the bag and found the necklace had disappeared.

The loss was immediately reported to the Pullman conductor, who made an investigation, but could find no trace of the necklace.

The railroad officials were notified and immediately sent descriptive circulars throughout the south asking the police to watch for its appearance in pawnshops.

A reward of $250 has been offered for the return of the necklace.

Mrs. Blaine-Beale is one of the most prominent society women in Washington and is a frequent visitor at the White House.

Jasper—I always sympathize with the upper dog in a fight.

Jumpuppe—You mean the under dog, don't you?

Jasper—No, I don't. Some fool philanthropist is sure to come along and kick in the ribs of the upper dog.—New York Sun.

Ethel—What did you say to papa last night?

Freddy—N—nothing. I was so scared that I didn't open my mouth.

Ethel—Oh! That accounts for it. He said you impressed him very favorably!—Puck.

She—But you must admit that society in our village is all the time becoming more cultured.

He—Yes, I hear that at the minstrel show next week instead of end men they advertise "superior terminal facilities."—Boston Transcript.