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THE SITTINGS OF THE COURT OF QUEEN'S BENCH—DISPLACING THE QUESTION.

There are all kinds of argument—good, bad, and indifferent—which may fairly be used; but there is another kind of representation, often used in discussion, which is not so defensible. It consists in the adroit substitution of a suggestion, which has no pretension to be an argument in place of one, so as to divert the attention from the matter in hand to some cognate subject.

Thus we have been reminded that there are two thousand cases in arrear in the Supreme Court of the United States, and that several English Courts have from five to eight hundred cases in arrear. It is impossible to imagine how these facts, if they be true, can alleviate the condition of a litigant before the Court of Appeals of this Province.

> "And common is the commonplace,
> And vacant chaff well-meant for grain."

There are delays inseparable from the administration of justice, but delay caused permanently by the encumbrance of the Roll for hearing cases is not necessary, and is a reproach to those who administer the law, or to the legislature which fails to provide sufficient machinery, or to both.

On the other hand, we are assured that the lawyers are too long-winded, and that the *panacea* for all evils of this sort is to be found in imitating the system adopted in Louisiana. It appears, that there, they manage to dispose of 100 cases in a few days. This is very satisfactory in a sense, and with similar expedition here, we should not only get rid of our arrears in a twinkling, but we should have the satisfaction of seeing the six Judges of Appeal enjoying an enviable amount of leisure. But before growing enthusiastic about this captivating result, let us see by what means it is obtained. The Court there is composed of five judges, who sit together to hear cases, the lawyers are allowed an hour each to speak in any case, whether they have much or little to say, and no one is permitted to speak longer than an hour without leave of the Court. Then the case, being heard, is taken *en délibéré*, that is to say, one of the five judges examines it, and makes a report of his examination to the others. If they agree to this report, then judgment is rendered for the party in favor of whom the examining judge reports; if not, there may be some discussion, which must evidently be between those who are slightly informed of the merits and one who knows them thoroughly, till they come to the opinion of a majority. If the unsuccessful party is not satisfied, he asks for a re-hearing, which, it seems, he rarely gets; but if he does, the case is again referred to one judge, and so on the matter goes again till the Court refuses to be further occupied with the question. The excellence, from an executive point of view, evidently consists in choking off re-hearings.

I am not prepared to say that justice is not well administered in Louisiana, but before accepting these exotic novelties, which seem to delight the imagination of those who dread the slightest home-spun innovation, a great change will have to be operated in the minds not only of the bar but of the public. If the public choose to be satisfied with judgments pronounced on the appreciation of one judge, or on the impulse of the minute by five, the arrears may easily be disposed of, even without the help of extra terms.

In the Quebec *Chronicle* of the 4th December, there is an instance of a still more objectionable mode of displacing the question. Some one signing "A Barrister," writes:—"If the idea expressed by one of the judges, that the Court should sit permanently in Montreal, was carried out, Quebec's *role* would be reduced to that of a rural district, and the litigants of our city would be forced to carry their records and cases to Montreal lawyers, who would not refuse them."

There are fictions founded upon fact, but this is one of a different sort.

For the honour of the profession it is to be hoped that the pseudonym of the *Chronicle's* correspondent is not more true than his statement.

R.

THE ONTARIO AND QUEBEC APPEAL COURTS—PROGRESS OF BUSINESS.

We have already mentioned that the Ontario Court of Appeals is encumbered by a list of inscriptions even longer than that of our Quebec Court, although it is not embarrassed by having to sit in two cities, 180 miles apart. Nevertheless it seems their lordships of Ontario do not think that business will be facilitated by sitting continually, regardless of what is to follow the arguments. Accordingly, we read in the Toronto journals of the 13th, that on the 12th—"At the opening of the Court of Appeal "at Osgoode hall, Chief Justice Spragge "remarked that he understood both bench and "bar were of opinion that it would facilitate "the speedy administration of justice if the "court should adjourn until decisions had been "given in the cases already argued, and now "standing for judgment before them. Mr. C. "Robinson, Q.C., stated that he had spoken to "several members of the profession on the "subject, and *all* were of opinion that the "suggestion of his Lordship should be acted "upon. The Court, therefore, will not sit again "until the eighth of January, except for the "hearing of election cases." When our Quebec Court met in Montreal on the 12th instant, there were 18 *délibérés* from the last Montreal term and 12 from the Quebec December term. Up to Saturday, 15th, there were twelve more cases taken *en délibéré*, making 42. On Monday five judgments were rendered, reducing the list of *délibérés* to 37. From Monday to Thursday afternoon, date of present writing, 13 cases were heard, bringing the list of *délibérés* up to 50.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

QUEBEC, December 7, 1883.

DORION, C.J., MONK, RAMSAY, TESSIER & BABY, JJ.

REGINA v. DELERY et al.

Mining Rights—Rights of the Sovereign—Letters Patent.

1. *By the old law of France, which is in force in Canada, the right to minerals did not pass by a grant of lands to the grantee, without special words, but remained in the Sovereign.*
2. *The King of England, at the Cession, succeeded to this right.*
3. *The Sovereign could grant the right to minerals to whomsoever he pleased, and in such case the owners of the soil had no right except to an indemnity for any damages they might suffer by the mining operations.*

The judgment appealed from was rendered by the Superior Court, Quebec (Caron, J.) See 9 Q. L. R. 225.

RAMSAY, J. This is an information by the Attorney-General of the Province of Quebec, in the nature of a *scire facias*, questioning the validity of Letters Patent of the late Province of Canada granting to Dame Marie Josephte Fraser, Charles Joseph Chaussegros de Léry, Alexandre René Chaussegros de Léry, their heirs and assigns for ever, the right to mine for "gold and other precious metals" within the limits of the fief and seigniory of Rigaud-Vaudreuil, the property of the grantees.

The conditions on which this grant was made were:

1st. That the grantors "shall well and truly pay to other our loving subjects such damages and compensation as may from time to time accrue in consequence of the ground occupied by the opening of roads and other like causes resulting from the operations in working the said mines; 2nd, that the grantees before working the mines should transmit and deposit with our secretary of the Province of Canada "a true and correct statement of the nature, situation, and extent of said ores, minerals, and mines"; 3rd, that the said grantees should transmit in each and every year to the Receiver-General of the Province a true and correct account of the gross produce of the same, in such form and manner as may thereafter be directed; 4th, that the grantees should "well and truly pay and deliver in each and every year, from the time of melting the said ores for the first time in working furnaces, to the Receiver-General, one net tenth part of the whole gross produce of the said ores, minerals, and substances, &c., "the said one tenth part being melted, cast and prepared in the same manner as the like may be for the behoof" of the said grantees; and refined according to the laws of France as confirmed by the Edict of the month of June, 1601.

And the patentees were further granted a remission of the payment of the tenth for five years from the date of the patent—that is from 18th Sept., 1846.

The narrative part of the Patent sets forth that it was granted on the representation of the said grantees that they were "seigniors and proprietors of the fief and seigniory of Rigaud-Vaudreuil," &c., "that there are supposed to exist within the limits of the said fief and seigniory certain ores, minerals and mines, containing gold and other precious metals of which supposed mines they have made the discovery, and are now desirous of digging and working for their own profit and advantage."

The respondents are the representatives of the said grantees, and it is sought to set aside the said Patent—

1st, Because it "was obtained by deceit, surprise, fraud, misinformation, and misrepresentation, practised by the grantees on the Government of Canada."

2nd, Because in the original grant to Mr. de la Gorgandière, and by the royal confirmation of that grant, there is no special grant of the mines to the seignior, and no reservation of them by the king, in fact no mention of them at all, except in so far as the Seignior is enjoined, "*De donner avis à Sa Majesté ou à nous et à nos successeurs des mines, minières, minérales, si aucuns se trouvent en la dite étendue*" of land so conceded as a fief.

3rd, That the Seigniorial Court had decided that "all reservations of mines by the Seignior were and are illegal, null and void, in all cases when the original grant contains no such reservations."

4th, That by the Seigniorial Act and the making of the *cadastre* all the rights of the Seignior, as such, were liquidated.

5th, That the *censitaires* of the Seigniory, and particularly one Archibald McDonald, have represented that no action had been taken by the de Léry Mining Company, to test the validity of the De Léry Patent, and that the Company had not settled amicably with the *censitaires*.

6th, That portions of the Seigniory had been conceded by the Seignior long before the grant of the Patent, and some portions since.

7th, The non-fulfilment by the grantees of the conditions of the grant.

8th, Irregularities in the Patents.

9th, That the grant to M. de la Gorgandière was not a grant of the Seigniory in question.

These seem to cover in general words the grounds on which the Attorney-General relies in order to obtain his conclusions; namely, that it be declared that the Letters Patent of the 18th Sept., 1846, were illegally and improvidently issued, that they are null and void, and that they be annulled and set aside, and that the enrollment and enregistration thereof be cancelled."

The deceit, fraud, surprise and misinformation is said to consist (*a*) in the fact that the grantees were not the owners of the soil in their seigniory, the Seignior not having any proprietary rights in his seigniory, part being conceded and part being held by the Seignior subject to obligatory concessions; (*b*) that the grantees were not discoverers, but that gold had been found there before by several persons.

It is also said there was a mis-recital in the deed, and, we may presume, it is intended we should understand, although not particularly alleged, that the *auteur* of the grantees of the Patent was never owner of the fief in question, and, finally, it is insisted that the owners of the soil (presumably the *censitaires* are intended) were entitled to a grant of these mines, and that the Crown could not grant a Patent to work mines till after the owner of the soil had refused to work them.

If the Attorney-General fails in his suit, it will not be for want of the allegation of grievances. Part of those complained of are met by a simple denial of the fact alleged, supported by the averments of the Patent and of the information itself. Whatever may be the legal value of the argument that a Seignior had no proprietary rights in the fief conceded to him and that he had no rights in the soil, it appears the grantees only represented that they were seigniors and proprietors of the fief and seigniory of Rigaud-Vaudreuil, and this fact is not denied. So they only averred that they owned what that title gave them. They say to the Crown, we hold from the Crown, what the King of France gave us by a title that is perfectly known, and it is idle to pretend that the Crown could have been deceived in the matter.

As to the grantees not being discoverers, it seems that the information confounds the grounds for setting aside Patents of Invention, with those for setting aside Patents to discoverers. Obviously the inventor is an originator, while the discoverer is not. History and

international law establish this. The discoverer who is rewarded by a Patent, is he who, without fraud, brings the knowledge to the sovereign of a fact hitherto not generally known. Again, finding pieces of gold in rivers or strewed about by accident was never assimilated to finding mines, nor subjected to the same policy. The "*or en paillote*" was declared to come "*par forme de manne et grâce de Dieu*," and it was the property of the finder who gathered it, whatever might be his condition. Lamé-Fleury, 116.

If it be true that the owners of the soil are absolutely entitled to all the mines on their property, then the information must fail in so far as regards all portions of Rigaud-Vaudreuil unconceded on the 18th September 1846.

It will, however, be perceived at once that the position taken up by the Attorney-General is somewhat ambiguous. It is one thing to say that the owner of the soil, is owner of the minerals on his land, and quite another to contend that he has an equitable claim to a grant.

As these questions are really those of greatest importance in this suit, and as they are mixed up with other propositions, we shall deal with them later. The only object in mentioning them at this part of the case is, that it may not be supposed they were over-looked in arriving at the conclusion that the Patent in question cannot be set aside owing to fraud or mispresentative on the part of the grantees or any surprise of the government.

The grounds for setting aside the Patent, which are grouped above as 2ndly, 3rdly, 4thly, 5thly and 6thly, set up two pretentions totally different, and to some extent incompatible.

One seems to be that the King of France having made no reservation of the mines of precious metals, they passed to the seignior, as some sort of inexplicable trustee for nobody in particular, that any reservation of such mines in a concession by the seignior was null and void, and that if, in any case, it could be considered good, the seignior had been compensated by the commutation of the tenure.

The other proposition is that the King of France did not part with them to the seignior or to anybody else, and that lawfully the King could not grant them to anybody but the actual owner of the soil, unless the owner refused to work them.

In connection with these propositions we have been referred to the Judgment of the Seigniorial Court, and we have been told, that all its decisions are *choses jugées* as regards the whole world.

There were a good many rather original ideas current at the time of the seigniorial agitation, but I do not remember ever having heard this one. Accidentally I knew a good deal about the earliest suggestion of the Seigniorial Court, and I should have been a good deal surprised if the idea of *chose jugée* had found its way into the statute. The idea of the proposer of the Seigniorial Court was, that these answers should be judicial declarations of the law in the abstract, something akin to *rescripts*, or perhaps more like *responsae prudentum*, for the guidance of the Commissioners to be appointed under the Act, and of the Attorney-General. That this view is the correct one will appear by reference to the 9th section of the Act of 1854, and to Sir Louis Lafontaine's remarks on the functions of the Seigniorial Court.

"Ce tribunal exceptionnel que la Législature a ainsi jugé à propos de créer, composé de tous les juges des deux premières cours du Bas-Canada, est appelé, sans exposé d'aucune espèce particulière à laquelle les lois existantes puissent être appliquées, à prononcer d'une manière abstraite, des décisions, ou plutôt des *rescrits* pour ainsi dire, qui doivent virtuellement déterminer le sort des prétentions respectives des seigneurs et des censitaires." (Questions Seigneuriales, Vol. A, 4 *b*).

The authority of this Court is doubtless very great whether we consider it historically, as a special institution created for the express purpose of overcoming difficulties of a formidable kind, or its composition and the means taken to turn that composition to profit. In a word it seems to me to have been a body legislating under the influence of judicial science—a legislature rather than a Court. Important then as its utterances are, it is not astonishing to find that they do not decide this case, although they do incidentally dispose of some of appellant's pretentions. Under the guidance of these decisions, the Commissioners could not give the appellants, or their *auteur* M. de Léry, any indemnity for mines and minerals. The decision on this point is short and perfectly explicit. (Vol. A 82 *a*), § 3. "Les réserves suivantes, ou autres analogues, étaient illégales et ne don-

nent au seigneur droit à aucune indemnité à raison de leur suppression, savoir :

* * * * * * * * *

Art. 3. Réserve de toutes mines, carrières, sable, pierre et autres matériaux de même nature."

Thus the alarm that Mr. de Léry is to be twice paid is wholly unfounded. But the Seigniorial decisions do not tell us whether or not mines and minerals passed to the Seignior by a general grant of lands, because the object of these decisions was to guide the Commissioners and the Attorney General not to allow the Seignior an indemnity for mines of gold and silver, and they go no further. We have, therefore, without their aid to decide the only important question in this case.

Again, the Seigniorial Court gave an authoritative answer to another of the introductory propositions of the counsel for the appellant, namely the trustee doctrine,and that the Seignior was not the owner of the soil of his Seigniory. Here is what the Court declared upon that point. (Page 51 *a*).

Réponse de la Cour—3 et 4. § 1. * * * * "Avant la sous-inféodation ou l'accensement, le domaine utile et le domaine direct, étaient réunis pour former un domaine entier dans la personne du Seigneur.—Adoptée à l'unanimité." * * * * * * *

"§ 3. Le sous-feudataire avait de même, avant l'inféodation ou l'accensement qu'il faisait, le domaine entier, sauf les droits du Seigneur dominant, et il conservait aussi un domaine direct sur ce qu'il avait lui-même sous-inféodé ou accensé." (Also 62 *a*). "Réponse de la Cour.—17.—§ 1. Suivant les lois en force en Canada, avant la cession du pays, les personnes auxquelles des terres avaient été accordées par la Couronne de France, en fief et seigneurie, en avaient la propriété pleine et entière (*dominium plenum*), mais elles ne pouvaient les aliéner autrement qu'il a déjà été mentionné." Also *Ib.* 63 *a*. "§ 2. Les seigneurs avant la concession des terres avaient dans le domaine plein, le domaine utile comme le domaine direct réunis, ainsi qu'il a été dit."

In a word the Seigniorial Court decided—that the *cessionnaires* of the land *en fief* from the king were, by the *arrêt* de Marly of 1711, obliged to concede the lands they could not cultivate, subject to *redevances*, and that they could make no *reserves* that did not properly come within the definition of *redevances*, except it was the reserve of a right of the Crown for the Crown, and that the Seigniors remained absolute proprietors of all unconceded lands, save the rights of the Crown.

It is therefore manifest, that whatever view we take of the law—whether we hold that the right to mines and minerals passed to the Seignior by his grant *en fief* or not, the Patent of 1846 was good for the mines and minerals on all unconceded lands.

It is not less manifest, that whether the Patent of 1846 is a re-grant from the Crown to Mr. de Léry of what had already been granted to his *auteur* or not, it gave him rights independent of his Seigniorial grant, and that as regards concessions subsequent to 1846, he is not within the words or the intention of the *arrêt de Marly* as defined by the Seigniorial Court, and consequently not within the scope of the decisions of the Seigniorial Court as regards these rights. Definitively he holds the mines in unconceded lands on special grant from the Crown, not as Seignior.

The Seigniorial decisions again help us here. The reserves of mines and other analogous reserves, are declared to be illegal in the sub-infeudation, because they are not allowed by any law and are not of the *essence* of the contract. I presume by the essence of the contract, its nature is intended, for there is nothing of the essence of feudality but the recognition of a superior to whom some duty or *redevance* is due. The concession of minerals and the right to mine is certainly neither of the essence nor of the nature of the feudal contract, and therefore its separate grant without any question of infeudation is purely and simply a grant of mines, and its being given to a seignior is immaterial.

This brings us to another point, namely, whether, under the allegations of the Information, the question thus reduced can be the subject of a *scire facias*. The only *censitaire* who appears to raise the question is a Mr. McDonald, and it does not appear whether his concession dates before the Patent or not. Unless his title goes back prior to the date of the Patent, which it was for him to show, he has no grievance, and this for two reasons perfectly distinct: First, The rule that *L'intérêt est la mesure des actions*, binds the

sovereign as well as the subject. The only difference is, that the interest of the former may be the legitimate defence of the latter. But the Crown must plead for a real right, McDonald appears to have none. Foster, Sc. fa., p. 246.

Second: The Crown cannot revoke a Patent for rights arising subsequent to its issue. Therefore, if McDonald has a grievance arising since, he should urge it himself. In no sense is the Crown his *garant*.

This argument appears to be decisive on this branch of the case. But in order that we may not appear to decide on narrow and technical grounds, shirking thus what is fully before us, it may be well to examine the main question, namely, whether the mines and minerals passed under general words to the Seignior, and from him, in spite of all reservations, to the *censitaire* before the Patent, or not.

On this question, a great deal of authority has been cited on both sides. The question does not appear to be one difficult of decision. The only ground for any difference of opinion seems to arise from confounding the constitution of the French monarchy with English constitutional rights. In France the king legislated as well as distributed justice; while in England the king could not at any period legislate, nor could he distribute Justice personally, or otherwise than by Justices appointed with a general jurisdiction according to the manner of the common law, unless we except, perhaps, the jurisdiction of the Privy Council. Appellant's quotations from Chitty on Prerogative are therefore only applicable to what has taken place since the cession, not to what took place before. But no one dreams of contending that if the Crown, by the Patent of 1846, granted to one person what it had already alienated to another, the latter grant is not void.

The right of the King of France to legislate, naturally involved the right to revoke grants, precisely as Parliament may, and I regret to say sometimes does confiscate property. No better instance of this power of the king of France can be found than the *arrêt* of Marly, already referred to, which has been declared binding as law, after the change of *régime* by the cession, and a non-user of nearly a hundred years.

Having this power it seems to me a fool-hardy attempt to try and establish that by the old law of France, mines and minerals buried in the ground did not remain the property of the king, in the absence of any special grant. The claim of the king to one-tenth of the produce is the fullest recognition of this right, and we find that reservation everywhere. Why should he have one-tenth, or any part at all unless he was owner? It was not a tax, and the statutes of the kingdom exclude formally any such idea. The mining policy changed over and over again, but the king's rights remained unchanged.

We have the text of the law of Charles VI, of 30th May, 1413, registered in the *Chambre des Comptes de Paris*, 18th March, 1483, and consequently forming part of the laws of Canada, confirmed by letters of Charles VII, Charles VIII, Louis XII, and Francis I. Now these laws are no more in favor of the proprietors of the soil than they are of the seignior. They are against the enterprises of the Seignior and his sub-feudatory, whoever he may be, and in favor of the man who actually works the mine, or causes it to be worked. (P. 3, Lamé-Fleury.)

The Ordinance of Louis XI of September 1471, registered in the Parlement de Paris, 27 July, 1475, regulates the mode of dealing with mines for "*notre profit, et au bien de ceux à qui la chose pourrait toucher et de la chose publique de notre dit royaume.*" It has been urged that this Ordinance gave the owner of the land a right to the minerals. But there is nothing to support that pretention in the Statute. Cap. V. says how and when they shall be excluded. This cannot create a right, although it indicates that ownership of the land would be a motive in certain cases for a grant.

The declaration of François I, of 17 October, 1520, does not seem to have been registered in Paris, and consequently is not positive law here; but it contains words which seem to imply a general rule that a title to mine from the King was necessary. "Et défendons que dorénavant aucuns, de quelque état ou condition qu'ils soient, ne puissent ouvrir ou faire ouvrir aucunes mines, sans avoir de nous congé, vérifié de nos dits maîtres général, visiteur, garde et contrôleur général des dites mines, pour obvier aux grands abus que l'on y a faits et ferait chaque jour. (*P.* 25, *Lamé Fleury—Législation des Mines.*)

This was the end of the period of free mining. The idea of the owner or the seignior having any equitable right is disappearing in

the public interest, and Mr. de Roberval obtains a temporary right to seek for, and open mines and to take possession of abandoned mines, all over the Kingdom. This was in September, 1548.

The 2nd March, 1552, a similar privilege was granted to Guillaume Gontré, and the following year de Roberval's privilege was extended, and the seigniors were given a small share in the King's tenth. After that, there are several grants and even an alienation of the King's tenth. On the 26th May, 1563, we have a declaration that this 10th "*nous appartient par droit de souveraineté.*" It was not then a tax but a right of property.

In 1597, we arrive at what Mr. Lamé-Fleury considers as the third period, in which the policy as to mines undergoes a change. It is in some sort a return to the earlier plan of throwing the right to mine open to all persons, but to subject its exercise to the most rigorous control so as to ensure the Crown's revenue. This policy remained unchanged till Canada passed away from the King of France. At that time the right of the King of France to all the mines ungranted in France is incontestable, and it seems to be equally clear that the King of England succeeded to those rights, although he he did not succeed to the right arbitrarily to set aside grants already made, as the King of France might have done. At all events the King of England ceased to have any such power from the time of the Quebec Act, when the Province of Quebec ceased to be governed as a Crown colony.

In face of the texts of the positive law of France, to which we have referred, it seems scarcely necessary to discuss the various speculations of the writers on the subject of the minerals hid in the bosom of the earth, which the learned counsel of the appellant, has, with commendable industry, placed before our eyes. It may be a part of the law of nature, whatever that may be supposed to signify *en droit*, that mines should belong to the owner of the soil, just as the earth, or a gravel pit does, but what we have to consider is the municipal law of France, and whether by it the right to minerals passed by a grant of lands to the grantee or whether it was deemed to remain with the King? It seems to be beyond the possibility of controversy, that the right did not pass without special words, and therefore that on the 18 September, 1846, when the Sovereign granted the right to the minerals in Rigaud-Vaudreuil to the de Léry family, she granted what it was Her Majesty's right to alienate, and that the owners of the soil had no rights whatever, and that all they could claim was indemnity for any damages they might suffer, which is specially reserved to them in the Patent.

From this point of view, it is immaterial whether McDonald's grant goes back before the date of the Patent or not.

An involved question has been engrafted on the case, which we shall endeavour to explain in a few words, as we understand it. It involves the special grievance of the Government of the Province of Quebec, as the inheritor of the rights of the King of France, and with it Mr. McDonald has nothing to do.

It seems that this grant was not so profitable during the first 19 years of its existence as had been expected. A company formed to work it on lease from the owner, discovered that a Royalty of one per cent. was equivalent to a prohibition, and in a letter to the Commissioner of Crown Lands, they intimated that they would rather pay nothing in the shape of Royalty, or so little as not "to work a hardship." In exchange for the remission of the Royalty or its reduction to a *minimum* they agreed to "waive in favour of the Government all conditions specified in the Patent precedent to the payment of the Royalty agreed upon, except those incident to the extraction and reduction of the precious metals and their proper submission to the officers of the Government for valuation." This letter was dated 4th Dec., 1865, and on the 10th May, 1866, the Commissioner made a report on the proposals of the Mining Company, which concludes with the following recommendation:—

"The undersigned considers that it would "be best to put this Company on the same "footing as regards tax as others, and to have "the disputes between it and the *Censitaires* as "to the ownership of the gold in the conceded "lands settled within a reasonable time, and "has therefore the honor to recommend, with-"out expressing any opinion as to the validity "of the Patent or the relative rights of the "assignees of the Patentees, and the *Censitaires* "and representatives, that the Company, not

" working any lands but those now conceded or " those as to which they acquire the right to " do so from the *Censitaires*, the Crown do agree " to receive from the former, in *lieu* of the " Royalty stipulated on the Letters Patent, " similar fees to those provided by the 'Gold " Mining Act,' on condition that they do within " five years from this date settle the disputes " with the *Censitaires* and representatives as to " the ownership of the gold on private lands, " either by making bargains with the owners, " or by taking such legal measures as will " demonstrate that the Company and not the " *Censitaires* are the owners of the gold on " private lands, and that failing adjustment of " these disputes within a reasonable time, the " Company shall abandon its pretension to " the gold on conceded lands, so that the " department may deal with the *Censitaires* as " owners of the gold, with the additional pro- " viso that lawsuits of the Company pending " at the termination of the period of five years " will be allowed to go to the final decision, " ordinary diligence being used to obtain such " decision."

This report was approved of by the Governor-General in Council, and accepted it is said, by the DeLéry Mining Company, and it is contended that it binds the DeLéry family, becomes a portion of the original Patent, and that the failure to fulfil the stipulations of this report, is a good cause for setting aside the Patent of 1846.

The only acceptance by the Mining Company was their letter of 4th December, 1865, and with this letter the DeLéry family had nothing to do. It was a transaction between the Company and the Government which amounts to this, that as the Government would not get any Royalty, because the quartz would be crushed and not smelted, it would take the Royalty mentioned in the Gold Mining Act.

But it is argued, if the DeLéry family are not bound by this agreement, they have failed to carry out the conditions of the Patent. There are two answers to this: First, there is no Royalty under the Patent to pay; second, if the Government chose to absolve the tenants of the grantees from the obligations of the Patent, it cannot find fault with the grantees either for the non-fulfilment of the original obligations, or of the substituted ones, unless the grantees have specially bound themselves to the new arrangement. There is no evidence of this.

This equally answers the pretention that the de Léry family were to settle with the *censitaires*, one way or other, either by suit or by arrangement. But there is still another answer to this last pretention, namely, that there are no suits in existence, except the one before us. Now can it be seriously pretended that the Attorney-General should succeed in setting aside the Patent of 1846, not on the merits, but because he is urging the rights of Mr. McDonald? If so, he had only to bring a suit, and shut the mouths of Respondents.

In order that there might be no chance thrown away, irregularities are complained of in the Patent itself. There was not any warrant, it is said, for the Bill, and no warrant for the Privy signet, nor no signet itself, nor warrant for the great seal, nor the great seal itself.

We are not aware that all these formalities are in use here. There is no Privy Signet. The great seal and the signatures of the proper officers are all the warrant required to authenticate a document of that kind, and if the great seal was used without warrant, or if the signatures were improperly attached, the appellant should have established this.

It has been also said there was a mis-recital, and that the original grant was not to the *auteur* of respondents. This is covered by an admission.

We are therefore to dismiss this appeal, and to confirm the judgment of the Court below quashing the Information of the Attorney-General.

Judgment confirmed.

C. Fitzpatrick for the Crown.

G. Amyot for the DeLéry Gold Mining Co.

W. & A. H. Cook for the other defendants.

GENERAL NOTES.

Mr. Baron Pollock presided recently at the annual supper to discharged criminals, commonly called the "Thieves' Supper," in Little Wild street, a narrow thoroughfare in the very centre of vice and crime. The guests were principally composed of ticket-of-leave men, most of whom are still under police surveillance. Baron Pollock, in an after-supper speech, asked all present to take "hope" and "courage"—"Hope that they might retrieve the past," and "Courage to listen to the still small voice within them."