The Legal News.

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JUDICIAL CHANGES.

An Act to amend the Act relative to the constitution of the Superior Court, 46 Vic., Cap. 13 (Quebec), came into force on the 1st May, by proclamation of the Lieutenant-Governor of Quebec, dated 11th April, 1883, published in the Quebec *Official Gazette*, of 17th April, 1883. By this Act the number of judges resident in Montreal was fixed at eight.

By an Order-in-Council passed at Ottawa by the Dominion Government, of date 23rd June, 1883, Mr. Justice Mathieu, previously resident in the District of Joliette, was removed to Montreal as the eighth judge.

HUSBAND AND WIFE.

A recent decision of the Court of Session in a case of *Thompson* v. *Thompson*, affords in rather a new direction, an illustration of the change which is coming over the relation of husband and wife in the eye of the law. We have not the full facts of the case before us, but so far as we understand it was an application by the wife for the allotment of a sum of money in the name of aliment for her child and expenses of her own case. The application was refused, Lord Fraser, in giving judgment resting his decision on the ground that the principles established in the last Married Women's Property Act involved a modification of the practice of the courts in respect to alimony. "I have come to the conclusion," his Lordship is reported to have said, "that in consequence of the recent Married Women's Property Act a wife in an action of divorce must in future litigate at her own charges like any other litigant. A woman can now carry on business like her husband, and earn her own livelihood like him, and there is therefore no ground for insistence on the rule which formerly prevailed, and which has worked practical injustice in a great many cases." Without knowing precisely the circumstances before the court, it is impossible to estimate the full effect of the above language. It is clear, however, that his Lordship regards himself as enunciating to some extent a new principle, and the point is one which is likely sooner or later to occupy the attention of the English courts. So far as we are aware, it has been the practice in Scotland, as well as in England, to take into consideration any existing income of the wife, whether arising from her own exertions or from other sources, in allotting alimony *pendente lite*. But to make allowance for the mere capacity of the woman to earn her own living, if that was the point decided by Lord Fraser, is, we believe an innovation on the existing practice in Scotland, and, except in very exceptional cases, in England also. At any rate, Lord Fraser's language shows the very unexpected ways in which the Married Women's Property Act from time to time operates. The Act is indeed a double-edged tool, and the above is only one of the many cases which have recently proved its capacity for cutting in either direction.—*Law Times* (London.)

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, June 16, 1883.

Before RAINVILLE, J.

ROSS et al. v. O'LEARY and O'LEARY, petitioner.

Contempt—Imprisonment.

Held, that a person over 70 years of age is not exempt from imprisonment for contempt of Court.

The judgment is as follows:—

"La Cour après avoir entendu les parties par leurs avocats contradictoirement sur la requête produite le 4 juin courant par le défendeur pour le faire mettre en liberté, examinée la procédure et les pièces produites, et la preuve, et délibéré;

"Attendu que par sa requête le dit requérant allègue que le 20 août 1882, il aurait été arrêté en vertu d'un bref de capias émis en cette cause, lequel capias a été contesté par le dit défendeur requérant, et maintenu par jugement de cette Cour rendu le 30 novembre dernier; que quelques jours après un bref de saisie-arrêt après jugement aurait été émis contre le dit défendeur à la poursuite du demandeur; que sur une règle émise en cette même cause et déclarée absolue, le dit requérant a été condamné à être emprisonné dans la prison commune de ce district

jusqu'à ce qu'il a payé la somme de $255.16, et qu'en vertu d'un mandat d'arrestation émis sur la dite règle le dit requérant aurait été incarcéré ;

" Attendu que le dit requérant allègue qu'il est âgé de plus de soixante-dix ans, savoir de soixante-treize ans, et qu'il a droit en conséquence d'obtenir sa libération ;

" Attendu qu'il allègue en outre que le dit mandat d'arrestation est irrégulier et illégal en autant qu'il a été émis pour un montant plus considérable que celui pour lequel il a été condamné ;

" Considérant que le dit requérant a prouvé qu'il est âgé de plus de soixante et dix ans, mais considérant que la dite règle a été émise parceque le dit requérant s'était rendu coupable de mépris de Cour en divertissant et cachant ses effets pour en empêcher la saisie ;

" Considérant que les dispositions de l'article 793 du Code de Procédure Civile sont tirées du chapitre 87 des Statuts Refondus du Bas Canada, lequel ne s'applique qu'à l'incarcération en vertu d'un capias, et qu'interpréter le dit article de manière à donner droit à toutes personnes âgées de plus de soixante-dix ans de se libérer mêmes quand elles auraient été emprisonnées pour mépris de Cour, serait contraire à la justice et mettrait les tribunaux dans l'impossibilité de faire exécuter leurs ordres ;

" Considérant que le requérant n'a pas prouvé les autres allégations de sa dite requête ;

" Rejette la dite requête avec dépens distraits à Maître J. P. Cooke, avocat des demandeurs."

P. B. Laviolette, for petitioner.

J. P. Cooke, for plaintiffs.

COUR SUPÉRIEURE.

MONTRÉAL, 30 Novembre 1882.

Coram PAPINEAU, J.

LEVIN v. TRAHAM.

Pouvoirs du tuteur.

JUGÉ :—*Que le tuteur ne peut faire commerce pour et au nom de son pupille.*

Que le mineur pour échapper à la responsabilité de ces actes de commerce peut simplement en plaider la nullité sans alléguer et prouver lésion.

Dame Adéline Rébecca Rousseau, épouse séparée de biens du défendeur, faisant de son vivant commerce à Nicolet sous la raison sociale de " Traham & Cie."

A sa mort, le défendeur fut nommé tuteur à son enfant qui hérita du fonds de commerce de sa mère. Le défendeur continua le commerce pour et au nom de son enfant mineur, achetant ici au comptant, là à crédit, ou réglant par billet promissoire signé H. Traham, tuteur.

La présente poursuite était pour un de ces billets et pour marchandises vendues et livrées pour ce commerce.

Le défendeur plaida qu'il n'avait qu'un pouvoir administratif, que le commerce n'était pas un acte d'administration, et que les billets promissoires qu'il avait donné comme l'achat des marchandises fait par lui étaient nuls.

PER CURIAM. " Considérant qu'il est prouvé que le montant du billet en question en cette cause a été donné pour la balance du prix de certaines marchandises vendues et livrées par les demandeurs au défendeur ès qualité de tuteur à son enfant mineur âgé de moins de quatre ans, lorsqu'elles ont été ainsi vendues ;

" Considérant que le tuteur n'a en vertu de la loi qu'un pouvoir d'administration sur les biens du mineur, et qu'il n'a pas le droit de faire le commerce pour son enfant mineur et au nom de ce dernier ;

" Considérant que le défendeur ès-qualité en achetant des demandeurs les marchandises en question dans cette cause à crédit, pour les revendre ensuite, non-seulement a fait un acte dépassant les bornes de l'administration d'un tuteur, mais qu'il a contrevenu indirectement à l'article 279 du Code Civil ;

" Considérant que la vente faite par les demandeurs au défendeur ès-qualité, sous les circonstances, n'est pas légalement une vente faite au mineur qu'il ne représentait pas, et qu'elle est nulle quant à ce dernier, et qu'en pareil cas le mineur n'a pas besoin de prouver lésion ;

" Considérant que le tuteur agissant en dehors des limites de l'autorité que lui donne la loi, ne lie pas son pupille, mais n'oblige que lui-même en sa qualité personnelle ;

" Considérant que le défendeur ès-qualité n'avait pas le droit d'acheter les marchandises en question à crédit, sans autorisation, même pour aider à l'écoulement du fonds de commerce dont son pupille a hérité, et que d'ailleurs, eût-il eu ce droit, il n'est par prouvé que ces marchandises aient actuellement servi à l'écoulement du dit fonds de commerce ;

" Considérant que les demandeurs ne peuvent pas même prétendre qu'ils ont droit de se faire

payer la valeur des dites marchandises, en autant que le mineur en aurait profité, attendu qu'il n'est pas prouvé que de fait elles aient profité au dit mineur;

"Considérant que la preuve faite par les demandeurs que les marchandises en question ont été vendues aux prix ordinaires du marché en gros, n'est pas la preuve que le mineur soit devenu par là plus riche d'une somme égale au montant du prix d'achat de ces marchandises qui ont pu ou peuvent être encore une cause de perte pour le mineur;

"Considérant que les demandeurs n'ont pas établi leur droit d'action contre le défendeur ès-qualité et que la défense est bien fondée et suffisamment prouvée, renvoie l'action des demandeurs avec dépens."

T. & C. C. de Lorimier, avocats des demandeurs.

Mercier, Beausoleil & Martineau, avocats du défendeur.

SUPERIOR COURT.

MONTREAL, July 9, 1883.

Before TORRANCE, J.

THE OSHAWA CABINET CO. v. SHAW et al.

Revendication—Possession.

This was a seizure and revendication of a horse, waggon and harness in the possession of the defendants, against the will of plaintiffs, the proprietors. The defendants denied that they had possession of these things; said that plaintiff had sold them their business in December, 1881, and placed the articles claimed in the possession of one Moore, to be sold by him, and meanwhile the defendants were to have the use of them by paying for the keep of the horse; that the horse always remained in the possession of said Moore until about the time of the seizure, when Moore sold the horse to one Murphy who was in possession at the time of the seizure. The plaintiff answered that the horse and other things were not placed in the custody of Moore to be disposed of by him, but in the hands of the defendants to be worked by them; that Moore had not been in plaintiff's employ since December, 1881, and if the things claimed were in the possession of Moore they were in his possession as employee of the defendants who had the use and control of them up to and at the time of the seizure, and the things were seized in their possession.

PER CURIAM. The question here is mainly one of possession, and it is necessary carefully to look at the facts of record. They are to be found mainly in the depositions of the two Messrs. Gibbs, Moore, Murphy, the alleged buyer, and James Elder. Taking up first the deposition of Frederick W. Gibbs, he was the manager of the plaintiff, and when the business was sold to the defendants in December, 1881, the horse and other articles in question were left with Shaw and Gowdey. They made the suggestion to leave the horse with them till the Spring, when a better price could be got for him. He bought the horse from a farmer at Oshawa for $150. He subsequently instructed his brother, who was here, to get the horse, &c., from Shaw & Gowdey to put them into the hands of Mr. Potter, for sale by auction. In cross-examination he says that the last thing he told Moore was to confer with his brother on all things connected with their business here. He had never thought of giving over possession of the horse to Moore for the very reason that Shaw & Gowdey had urged him to leave it with them, and Moore thought of going west to Winnipeg. In March (21st) he wrote Moore not to collect money for the company, but to refer parties to Mr. Samuels, their collector. He further says Moore was simply to see what offers he could get for the horse, and communicate them to the manager. Charles L. Gibbs, another witness, says that about the 10th May, he saw Moore about the horse, and was told by him that he had a standing offer for all of $150. He wrote this to the manager who telegraphed back to hand over the articles to Mr. Potter for sale by auction. Thereupon he gave Potter an order in writing upon the defendants to deliver them. They refused delivery, and explained that they were under seizure by the *Minerve* for $18.75. He immediately settled this claim and got an order from the lawyers upon the guardian to the seizure, who was Moore, for delivery of the horse &c. Showing this order to Mr. Gowdey, one of defendants, he said they could not give up the horse till the landlord was settled with. He then settled with the landlord, returned immediately to Shaw & Gowdey, informed them of the settlement, and asked for the horse. At that moment Murphy came forward, and said the

horse, &c., belonged to him, and exhibited a receipt for $125. The horse had been advertised to be sold on 23rd May, by Potter, and he, Gibb, had told Gowdey, previously, that he had been instructed to sell horse, &c., for $175. Gowdey told him he had given the landlord his word not to let the horse go till he was settled with. Moore, another witness, was in the employ of Shaw & Gowdey from December to June. He (Moore) says, he was to sell the horse, if he could do so, and see, meanwhile, that he was well taken care of. The horse was driven by James Elder, in the employ of Shaw & Gowdey. Moore says he had control of the horse, and not Shaw & Gowdey. He admits seeing Charles T. Gibb in May, about the horse. He told him of an offer of $150, and asked if he should take it, and was told to do so. Then Moore saw the horse advertised. The same day he saw Charles Gibb, who asked him for the horse. "I told him of the "*Minerve* seizure. He went away and brought "back an order on me to surrender the horse as "the debt was paid. Well, as soon as the seizure "of the *Minerve* was taken off I sold the horse "to Murphy."

In cross-examination, he says that Murphy did nearly all the cartage for Shaw & Gowdey. Moore saw Gibb more than once on the day he sold the horse to Murphy, but said nothing to him about selling the horse to Murphy. He said he had Murphy's offer three months. He admits that in March he received instructions not to receive moneys. The money received for the horse by Moore, is in the hands of the defendants' attorneys. He had a letter from plaintiff's manager in January, saying that if he could not get $125 for the horse alone, the manager would bring it back to Oshawa. James Murphy, another witness, says he was the buyer of the horse. James Elder was then driving the horse for the defendants, or Moore, he says. He, Murphy, leased the horse then to Shaw & Gowdey, and Elder continued to drive him, and they paid Elder. He got $3 per day for the horse. He did not pay Elder. Elder says he was driving the horse when the seizure took place; was driving him for Moore in Murphy's waggon, and drove him for a month afterwards carting defendants' goods, and was paid all the same by Moore.

Three or four simple facts appear very plainly from this narrative. Shaw & Gowdey had the possession of the horse, &c., and Moore, their clerk, held it under them. The horse was used every day in their business till a month after the seizure. So the driver, Elder, says. He was in Elder's possession when seized, doing their work. Shaw & Gowdey and Moore knew that the horse was wanted by the owner when sold on the 25th May. It is grossly improbable that Moore, their clerk, would sell him suddenly without their knowledge. Things went on as regards the horse in the same way for a month after the seizure, according to Elder the driver, he driving the horse and being paid by Moore. The cross-examination of Moore and Murphy, the buyer, witnesses for defendants, when cross-examined by plaintiff, shows a most evasive spirit. On the day of the sale, one obstacle after another was put in the way of Gibb getting the horse until 3 p.m., when Murphy came forward and said he was proprietor, having just bought him. There is proof of the seizure of the horse but not of the waggon or harness. The order will go that the horse, harness and waggon be given up, or that the defendants pay $175. Costs in either case against them.

Greenshields, Busteed & Guerin for plaintiff.
Kerr & Carter for defendant.

JUDICIAL COMMITTEE OF PRIVY COUNCIL.

July 18, 1883.

Present: The Lord Chancellor, Sir Barnes Peacock, Sir Montague Smith, Sir Robert P. Collier, and Sir Arthur Hobhouse.

Attorney General of Ontario v. Mercer.

Escheat—Rights of Provincial Government.

Lands in Canada escheated to the Crown for defect of heirs belong to the Province in which they are situate, and not to the Dominion of Canada.

The judgment of their lordships was delivered by

The Lord Chancellor.—The question to be determined in this case is whether lands in the Province of Ontario escheated to the Crown for defect of heirs belong (in the sense in which the verb is used in the British North America Act, 1867) to the Province of Ontario or to the Dominion of Canada.

By the Imperial Statute 31 George III., cap. 31, section 43, it was provided that all lands

which should be thereafter granted within the Province of Upper Canada (now Ontario) should be granted in free and common socage in like manner as lands were then holden in free and common socage in England. The argument before their lordships on both sides proceeded upon the assumption that the lands now in question were so holden. All land in England in the hands of any subject was holden of some lord by some kind of service, and was deemed in law to have been originally derived from the Crown, "and therefore the King was Sovereign Lord, or Lord paramount, either mediate or immediate, of all and every parcel of land within the realm" (Co. Litt., 65a). The King had "*dominium directum*," the subject "*dominium utile*" (*ibid.*, 1a). The word "tenure" signified this relation of tenant to lord. Free or common socage was one of the ancient modes of tenure ("a man may hold of his lord by fealty only, and such tenure is tenure in socage," Litt. Sec. 118), which, by the statute 12 Charles II., cap. 24), was substituted throughout England for the former tenures of knight-service and by socage *in capite* of the King, and relieved from various feudal burdens. Some, however, of the former incidents were expressly preserved by that statute, and others (escheat being one of them) though not expressly mentioned, were not taken away. "Escheat is a word of art, and signifieth properly when by accident the lands fall to the lord of whom they are holden, in which case we say the fee is escheated." Co. Litt., 13a). Elsewhere (*ibid.*, 92b) it is called "casual profit," as happening to the lord "by chance and unlooked for." The writ of escheat, when the tenant died without heirs, was in this form:—"The King to the Sheriff, etc. Command A, etc., that he render to B ten acres of land, with the appurtenances in N, which C held of him, and which ought to revert to him the said B as his escheat, for that the said C died without heirs" (F.N.B., 144 F). If there was a mesne lord, the escheat was to him; if not, to the King. From the use of the word "revert," in the writ of escheat, is manifestly derived the language of some authorities which speak of escheat as a species of "reversion." There cannot, in the usual and proper sense of the term, be a reversion expectant upon an estate in fee simple. What is meant is that when there is no longer any tenant, the land returns by reason of tenure to the lord by whom, or by whose predecessors in title, the tenure was created. Other writers speak of the lord as taking it by way of succession in inheritance, as if from the tenant, which is certainly not accurate. The tenant's estate (subject to any charges upon it which he may have created) has come to an end, and the lord is in by his own right.

The profits and the proceeds of sales of lands escheated to the Crown were in England part of the casual hereditary revenues of the Crown, and (subject to those powers of disposition which were reserved to the Sovereign by the Restraining and Civil List Acts) they were among the hereditary revenues placed at the disposal of Parliament by the Civil List Acts passed at the beginning of the present and the last preceding reign. Those Acts extended expressly to all such casual revenues arising in any of the colonies or foreign possessions of the Crown.

But the right of the several Colonial Legislatures to appropriate and deal with them within their respective territorial limits was recognized by the Imperial Statute 15 and 16 Vic., cap. 39, and by an earlier Imperial Statute (10 and 11 Vic., cap. 71) confirming the Canada Civil List Act passed in 1846, after the union of Upper and Lower Canada, by which Act the provision made by the Colonial Legislature for the charges of the Royal Government in Canada was accepted and taken instead of "all territorial and other revenues" then at the disposal of the Crown arising in that Province, over which (as to three-fifths permanently and as to two-fifths during the life of the Queen and for five years afterwards) the Legislature of the Province was to have full power of appropriation.

It may be remarked that the Civil List Acts of the Province of Canada contained no reservation of escheats, similar to section 12 of each of the Imperial Civil List Acts above referred to. It must have been purposely omitted, in order that escheats might be dealt with by the Government or Legislature of Canada, and not by the Crown, in whose disposition they must have remained if they had not been in that of the United Province of Canada. When, therefore, the British North America Act of 1867 passed, the revenue arising from all escheats to the Crown, within the then Province of Canada, was

subject to the disposal and appropriation of the Canadian Legislature. That Act united into one Dominion, under the name of "Canada," the former Province of Canada (which it subdivided into the two new Provinces of Ontario and Quebec, corresponding with what had been before 1840 Upper and Lower Canada), Nova Scotia, and New Brunswick. It established a Dominion Government and Legislature, and Provincial Governments and Legislatures, making such a division and apportionment between them of powers, responsibilities, and rights as was thought expedient. In particular, it imposed upon the Dominion the charge of the general public debts of the several pre-existing Provinces, and vested in the Dominion (subject to exceptions, on which the present question mainly turns) the general public revenues, as then existing, of those Provinces. This was done by section 102 of the Act, which is in these words:—"All duties and revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick, before and at the Union, had and have power of appropriation, except such portions thereof as are by this Act reserved to the respective Legislatures of the Provinces or are raised by them in accordance with the special powers conferred upon them by this Act, shall form one Consolidated Revenue Fund, to be appropriated for the public service of Canada in manner and subject to the charges in this Act provided." If there had been nothing in the Act leading to a contrary conclusion, their Lordships might have found it difficult to hold that the word "revenues" in this section did not include territorial as well as other revenues, or that a title in the Dominion to the revenues arising from public funds did not carry with it a right of disposal and appropriation over the lands themselves. Unless, therefore, the casual revenue, arising from lands escheated to the Crown after the Union, is excepted and reserved to the Provincial Legislatures within the meaning of this section, it would seem to follow that it belongs to the Consolidated Revenue Fund of the Dominion. If it is so excepted and reserved, it falls within section 126 of the Act, which provides that "such portions of the duties and revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick had before the Union power of appropriation as are by this Act reserved to the respective Governments or Legislatures of the Provinces, and all duties and revenues raised by them in accordance with the special powers conferred upon them by this Act, shall in each Province form one Consolidated Revenue fund, to be appropriated for the public service of the Province."

Their Lordships, for the reasons above stated, assume the burden of proving that escheats subsequent to the Union are within the sources of revenue excepted and reserved to the Provinces, to r st upon the Provinces. But if all ordinary territorial revenues arising within the Provinces are so excepted and reserved, it is not *a priori* probable that this particular kind of casual territorial revenue (not being expressly provided for) would have been, unless by accident and oversight, transferred to the Dominion. The words of the statute must receive their proper construction, whatever that may be; but if this is doubtful, the more consistent and probable construction ought, in their Lordships' opinion, to be preferred. And it is a circumstance not without weight in the same direction that, while "duties and revenues" only are appropriated to the Dominion, the public property itself, by which territorial revenues are produced (as distinct from the revenues arising from it), is found to be appropriated to the Provinces.

The words of exception in section 102 refer to revenues of two kinds—(1) Such portions of the pre-existing "duties and revenues" as were by the Act "reserved to the respective Legislatures of the Provinces;" and (2) such "duties and revenues" as might be "raised by them in accordance with the special powers conferred on them by the Act." It is with the former only of these two kinds of revenues that their lordships are now concerned, the latter being the produce of that power of "direct taxation within the Provinces, in order to the raising of a revenue for Provincial purposes," which is conferred upon the Provincial Legislatures by section 92 of the Act.

There is only one clause in the Act by which any sources of revenue appear to be distinctly reserved to the Provinces—viz., the 109th section:—"All lands, mines, minerals, and royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick, at the Union, and all sums then due or payable for

such lands, mines, minerals, or royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick, in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the Province in the same." The Provincial Legislatures are not, in terms, here mentioned, but the words, "shall belong to the several Provinces" are obviously equivalent to those used in section 126—"are by this Act reserved to the respective Governments or Legislatures of the Provinces." That they do not apply to all lands held as private property at the time of the union seems clear from the corresponding language of section 125, "No lands or property belonging to Canada or any Province shall be liable to taxation"—where public property only must be intended. They evidently mean lands, etc., which were at the time of the union in some sense and to some extent *publici juris*, and in this respect they receive illustration from another section, the 117th (which their lordships do not regard as otherwise very material)—"The several Provinces shall retain all their respective public property not otherwise disposed of by this Act, subject to the right of Canada to assume any lands or public property required for fortifications or for the defence of the country." Their lordships are not satisfied that section 102, when it speaks of certain portions of the then existing duties and revenues as "reserved to the respective Legislatures of the Provinces," ought to be understood as referring to the powers of Provincial Legislation conferred by section 92. Even, however, if this were so held, the fact, that exclusive powers of legislation were given to the Provinces as to "the management and sale of the public lands belonging to the Province," would still leave it necessary to resort to section 109 in order to determine what those public lands were. The extent of the Provincial power of legislation over property and civil rights in the Province cannot be ascertained without at the same time ascertaining the powers and rights of the Dominion under sections 91 and 92, and therefore cannot throw much light on the extent of the exceptions and reservations now in question.

It was not disputed, in the argument for the Dominion at the Bar, that all territorial revenues arising within each Province from "lands" (in which term must be comprehended all estates inland) which at the time of the union belonged to the Crown, were reserved to the respective Provinces by section 109, and it was admitted that no distinction could, in that respect, be made between Crown lands then ungranted and lands which had previously reverted to the Crown by escheat. But it was insisted that a line was drawn at the date of the union, and that the words were not sufficient to reserve any lands afterwards escheated which at the time of the union were in private hands and did not then belong to the Crown. If the word "lands" had stood alone it might have been difficult to resist the force of this argument. It would have been difficult to say that the right of the lord paramount to future escheats was "land belonging to him" at a time when the fee-simple was still in the freeholder. If capable of being described as an interest in land, it was certainly not a present proprietary right to the land itself.

The word "lands," however, does not here stand alone. The real question is as to the effect of the words "lands, mines, minerals, and royalties" taken together. In the Court of Appeal of the Province of Quebec it has been held that these words are sufficient to pass subsequent escheats; and for this purpose, stress was laid by some at least, of the learned Judges of that Court (the others not dissenting) on the particular word "royalties" in this context.

If "lands and royalties" only had been mentioned (without "mines" and "minerals") it would have been clear that the right of escheats, whenever they might fall, incident at the time of the Union to the tenure of all socage lands held from the Crown, was a "royalty" then belonging to the Crown within the Province, so as to be reserved to the Province by this section and excepted from section 102. After full consideration, their Lordships agree with the Quebec Court in thinking that the mention of "mines" and "minerals" in this context is not enough to deprive the word "royalties" of what would otherwise have been its proper force. It is true (as was observed in some of the opinions of the majority of the Judges in the Supreme Court of Canada) that this word "royalties" in mining grants or leases (whether granted by the Crown or by a subject) has often a special

sense, signifying that part of the *reddendum* which is variable and depends upon the quality of minerals gotten. It is also true that in Crown grants of land in British North America the practice has generally been to reserve to the Crown not only Royal mines properly so called, but minerals generally, and that mining grants or leases had before the Union been made by the Crown both in Nova Scotia and New Brunswick, and that in two Acts of the Province of Nova Scotia (one as to coal mines and the other as to mines and minerals generally) the word "royalties" had been used in its special sense as applicable to the variable *reddenda* in mining grants or leases. Another Nova Scotia Act of 1849, surrendering to the Provincial Legislature the territorial and casual revenues of the Crown arising within the Province, was also referred to by Mr. Justice Gwynne. But the terms of that Act were very similar to those now under consideration, and if "royalties" in the context which we have here to consider, do not necessarily and solely mean *reddenda* in mining grants or leases, neither may they in that statute. It appears, however, to their Lordships to be a fallacy to assume that, because the word "royalties" in this context would not be inofficious or insensible, if it were regarded as having reference to mines and minerals, it ought therefore to be limited to those subjects. They see no reason why it should not have its primary and appropriate sense, as to (at all events) all the subjects with which it is here found associated—lands as well as mines and minerals. Even as to mines and minerals, it here necessarily signifies rights belonging to the Crown, *jura coronæ*.

The general subject of the whole section is of a high political nature; it is the attribution of Royal territorial rights, for purposes of revenue and government, to the Provinces in which they are situate or arise. It is a sound maxim of law that every word ought *prima facie* to be construed in its primary and natural sense, unless a secondary or more limited sense is required by the subject or the context. In its primary and natural sense, "royalties" is merely the English translation or equivalent of "*regalitates*," "*jura regalia*," "*jura regia*." (See "royalties," Cowell's Interpreter, Wharton's Law Lexicon, Tomlins' and Jacobs' Law Dictionaries). "*Regalia*" and "*regalitates*," according to Ducange, are "*jura regia*;" and Spelman (Gloss, Arch.) says, "*Regalia dicuntur jura omnia ad fiscum spectantia.*" The subject was discussed, with much fullness of learning, in *Dyke v. Walford* (5 Moore, P. C. 634). where a Crown grant of *jura regalia*, belonging to the County Palatine of Lancaster, was held to pass the right to *bona vacantia*. "That it is a *jus* (said Mr. Ellis in his able argument, *regale* p. 480) is indisputable; it must also be *ibid;* for the Crown holds it generally through England by Royal prerogative, and it goes to the successor of the Crown, not to the heir or personal representative of the sovereign. It stands on the same footing as the right to escheats, to the land between high and low water mark, to felons' goods, to treasure trove, and other analogous rights." With this statement of the law their lordships agree, and they consider it to have been in substance affirmed by the judgment of Her Majesty in Council in that case. Their lordships are not now called upon to decide whether the word "royalties" in section 109 of the British North America Act of 1867 extends to other Royal rights besides those connected with "lands," "mines," and "minerals." The question is whether it ought to be restrained to rights connected with mines and minerals only, to the exclusion of royalties, such as escheats, in respect of lands. Their lordships find nothing in the subject or the context, or in any other part of the Act, to justify such a restriction of its sense. The larger interpretation (which they regard as in itself the more proper and natural) also seems to be that most consistent with the nature and general objects of this particular enactment, which certainly includes all other ordinary territorial revenues of the Crown arising within the respective Provinces.

The conclusion at which their lordships have arrived is that the escheat in question belongs to the Province of Ontario, and they will humbly advise Her Majesty that the judgment appealed from ought to be reversed, and that of the Vice-Chancellor and Court of Appeal of Ontario restored. It is some satisfaction to know that in this result the Courts of Quebec and Ontario have agreed, and though it differs from the opinion of four judges constituting the majority of the Supreme Court of Canada, two of the judges of that Court, including the Chief Justice, dissented from that opinion. This being a question of a public nature, the case does not appear to their lordships to be one for costs.

Judgment reversed.

Horace Davey, Q.C., *The Attorney-General of Ontario*, *Raleigh* and *J. R. Cartwright*, } Counsel for the Appellant.

The Solicitor-General, *Lash*, *Q.C.*, and *Jeune*, for the Dominion Government.