Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Chappelle v. *The King; The King* v. *Chappelle; Carmack* v. *the King; and Tweed and another* v. *The King; from the Supreme Court of Canada, delivered the 2nd December* 1903.

Present at the Hearing:
LORD MACNAGHTEN.
LORD DAVEY.
LORD ROBERTSON.
LORD LINDLEY.
SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

This case presents in the form of a Consolidated Appeal three several Appeals brought by special leave of His Majesty from the Supreme Court of Canada, which reversed the Judgment of Burbidge J. in the Exchequer Court by a majority of three Judges to two. In each of the three Appeals His Majesty the King is the sole Respondent. In one—Chappelle's case—in which the Crown was not wholly successful before the Supreme Court, there is a Cross-Appeal on behalf of His Majesty.

The questions in debate relate to the position and rights of placer miners in the Yukon Territory holding under renewal grants on the one hand, and the powers of the Crown as limited by Statute and defined by Regulations issued by the Governor in Council on the other.

There are no facts in dispute. All the evidence is common to all the three cases. Indeed there is in substance no difference

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between the cases except that which arises from difference in date of licences and regulations. The cases themselves may be regarded as test cases. The ultimate decision will govern a number of similar claims amounting, it is said, in value to more than $300,000, which in the meantime have been stayed by arrangement between the Claimants and the Crown.

All the material facts and all the arguments on the one side and on the other are to be found in the Judgments of Mr. Justice (now Chief Justice) Taschereau and Sedgewick J. in favour of the Suppliants, and in the Judgment of Davies J. in favour of the Crown.

The Judgment of Davies J. appears to their Lordships to deal with the subject in a manner which leaves nothing to be desired. It is concise, clear, and convincing. Their Lordships are unable to add anything to it in the way of argument. They will therefore content themselves with adopting it without qualification, and stating as briefly as possible their conclusions on the various points most strongly pressed at the Bar.

The main contention on behalf of the Suppliants was that a placer miner had an absolute right to the renewal of his grant for a term of five years on the conditions of the original grant and subject only to the regulations in force when that grant was obtained.

Now the Dominion Lands Act (Chapter 54 of the Revised Statutes of Canada, 1886) in Section 47 declares that "lands containing coal or other "minerals, whether in surveyed or unsurveyed "territory, * * * shall be disposed of in "such manner and on such terms and conditions "as are from time to time fixed by the Governor "in Council by regulations made in that "behalf." Under this Statute Regulations for the disposal of mining claims had been made in 1889. These Regulations were in force in the Yukon

Territory when Chappelle first lodged an application for a grant for placer mining in respect of a claim in Hunker Creek known as "Fractional "Mining Claim No. 3A below Discovery." Placer mining, speaking roughly, consists in collecting and washing for gold the superficial detritus. It differs from quartz mining mainly in this—that whereas quartz mining requires expensive machinery, placer mining for the most part is carried on by manual labour. The Regulations of 1889 dealt both with quartz mining and placer mining, and, as might be expected, they dealt with the two methods in a different manner. The quartz miner having complied with the prescribed conditions, and having paid the required fee, obtains from the Agent of Dominion Lands a receipt according to Form B in the Schedule authorizing him "to "enter into possession of the location applied "for, and subject to its renewal from year to year "as" thereinafter "provided during the term "of five years from its date to take therefrom "and dispose of any mineral deposit contained "within its boundaries," provided that he expends during each of the five years a sum of at least one hundred dollars in actual mining operations on the claim. Thereupon subject to the payment of the prescribed fee the Agent issues another receipt in Form C in the Schedule which entitles the claimant to hold the location for another year. At any time before the expiry of the five years the Claimant is entitled to purchase the location at so much per acre on proving that he has complied with the requirements of the Regulations in that behalf. As regards placer mining the forms of application for a grant for that purpose and the grant for the same were to be those contained in Forms H and I in the Schedule,and it was provided by Section 20 that

" the entry of every holder of a grant for placer " mining must be renewed and his receipt " relinquished and replaced every year, the entry " fee being paid each time." According to Form I the Minister of the Interior grants to the Claimant " for the term of one year * * * " the exclusive right of entry upon the claim " as described " for the miner-like working thereof " and the construction of a residence thereon and " the exclusive right to all the proceeds realised " therefrom." Form I then proceeds to state that the grant does not convey any surface rights in the claim or any right of ownership in the soil covered by the claim, and that the rights granted are those laid down in the Mining Regulations and no more, and are subject to all the provisions of the said Regulations, whether the same are expressed in the grant or not.

Now if the case rested there, there would be nothing to support the claim advanced on behalf of the Suppliants. The difficulty, such as it is, is created by Section 17 which heads the provisions relating to placer mining, and is expressed in the following terms :—

" Section 17. The regulations hereinbefore " laid down in respect of quartz mining shall " be applicable to placer mining so far as they " relate to entries, entry fees, assignments, " marking of locations, Agents' receipts, and " generally where they can be applied save and " except as otherwise herein provided."

The argument on behalf of the Suppliants was based on this Section. Much reliance was placed on the expression " Agents' receipts," which occurs in it. It was contended that the effect of making the Regulations so far as they related to Agents' receipts in the case of quartz mining applicable also to placer mining, was to extend to the holder of a grant for placer mining the

right of renewal by annual grants for the full period of five years on the terms and conditions of the original grant.

It is certainly not easy to understand what is meant by the reference to "Agents' receipts" in Section 17. The words may have crept in through inadvertence, or they may be susceptible of some explanation not yet discovered. But however their presence is to be accounted for, it appears to their Lordships that they cannot be construed so as to contravene the plain intention appearing on the face of the Regulations and Forms relating to placer mining, especially having regard to the saving and exception with which Section 17 concludes. Their Lordships therefore are of opinion that the placer miner on renewal holds under an annual grant in substitution for, but not in continuation of, his original grant. He has no absolute right to renewal. He has no doubt a preferential right of renewal, because no interloper can be in a position to make the affidavit required to entitle him to a grant of the claim so long as the original occupant complies with the requirements of his grant and applies in due time for a renewal.

Their Lordships are further of opinion that a placer miner obtaining a renewal grant in due course holds his claim subject to all such regulations as may be in force at the date when the renewal grant comes into operation.

In some cases it appears that for the convenience of the miner a renewed grant was issued during the currency of an existing grant. It was argued that the miner, having got possession of a renewal grant, was not liable to be affected by regulations not then in force but coming into operation before the expiry of the existing grant. Their Lordships are unable to accede to this argument. Their Lordships think

that a renewal grant must be subject to all regulations in force at the date when it comes into operation.

It was further argued on behalf of the Suppliants that the Governor in Council had no power to make regulations requiring the placer miner to pay a percentage on the proceeds realised from his claim. Such an imposition, it was urged, was contrary to the terms of the grant which gave the miner exclusive right to all such proceeds, and it was besides nothing more or less than a tax which could only be imposed by authority of Parliament. Their Lordships do not think that there is any substance in either of these objections. The imposition, though it may be regarded as a tax in one point of view, is, in their Lordships' opinion, a reservation out of the grant which it was competent for the grantor as owner in fee to make. And their Lordships agree with the Supreme Court in thinking that the expression "exclusive right" in the grant does not mean a right exclusive of the Crown, but a right exclusive of all persons other than the Crown.

In the result therefore their Lordships are of opinion that the Appeals fail.

Their Lordships are further of opinion that the Cross-Appeal on behalf of the Crown fails also. That depends upon a very short point. By the Dominion Lands Act (Sec. 91) it was provided that every order or regulation made by the Governor in Council shall have force and effect only after the same has been published for four successive weeks in the Canada Gazette. Now the Regulations under which the Crown claims to be entitled to the payment which is the subject of the Cross-Appeal had been published in four successive weekly issues of the Gazette when Chappelle obtained his renewal grant. But the period of four weeks from the date of the first

issue had not then expired, and therefore it seems to their Lordships impossible to contend that those regulations had been published in the Gazette for the period required by the Act and that Chappelle's renewal grant was subject to them.

Two further contentions were advanced on behalf of the Crown which do not seem to their Lordships to require a serious answer. It was said that this exaction to which Chappelle was compelled to submit, at the peril of forfeiting his grant, was a voluntary payment on his part. It was no more voluntary than the payment which Custom house officials exact from a traveller in respect of dutiable goods. It was also said that the Crown, having exacted this payment from Chappelle, could not, when it was determined that the Crown had no right to the money, safely return it to the person from whom it was taken, but that there must be a judicial enquiry which might be prolonged indefinitely for the purpose of satisfying the Crown that no one but Chappelle was entitled to the refund. It is certainly a novel proposition that A having taken money from B wrongfully, is entitled, before he restores it, to put B to proof of his title. This contention, though it seems to have found favour with the Court of First Instance, is, in their Lordships' opinion, contrary to principle.

One other point remains to be noticed. In Chappelle's printed case interest is claimed against the Crown in respect of the money held to have been illegally exacted. Their Lordships express no opinion upon this point because it formed no part of the Appeal to the Supreme Court. The question of interest was reserved by the Judge of First Instance, and all parties seem to have acquiesced in that reservation whatever the effect of the reservation may be. Even if the question were now open their Lordships would be loth to decide it without having the

benefit of the opinion of the learned Judges of the Supreme Court.

Their Lordships will therefore humbly advise His Majesty that the Appeals and the Cross-Appeal ought to be dismissed.

Under the circumstances their Lordships do not think fit to make any Order as to costs.