

G. N. HARTLEY AND OTHERS, } APPELLANTS;  
(PLAINTIFFS)..... }

1902

\*Oct. 20.

\*Nov. 6.

AND

C. A. MATSON AND OTHERS, } RESPONDENTS.  
(DEFENDANTS)..... }

ON APPEAL FROM THE TERRITORIAL COURT OF THE  
YUKON TERRITORY.

*Appeal—Jurisdiction—Yukon Territorial Court—Decisions of Gold Commissioner—Special appellate tribunal—Finality of judgment—Legislative jurisdiction of Governor-in-Council—62 & 63 V. c. 11, s. 13—1 Edw. VII. O.-in-C. p. lxxii.—2 Edw. VII. c. 35—Mining lands.*

The Supreme Court of Canada has jurisdiction to hear appeals from the judgments of the Territorial Court of the Yukon Territory, sitting as the Court of Appeal constituted by the Ordinance of the Governor in Council of the eighteenth of March, in respect to the hearing and decision of disputes affecting mineral lands in the Yukon Territory. The Governor-in-Council has no jurisdiction to take away the right of appeal to the Supreme Court of Canada provided by 62 & 63 Vict. ch. 11 of the Statutes of Canada.

**MOTION** to quash an appeal from the judgment of the Territorial Court of Yukon Territory, sitting as the Court of Appeal constituted by the ordinance of the Governor-General-in-Council of 18th March, 1901, respecting disputes in relation to mineral lands

\* PRESENT:—Sir Henry Strong C.J. and Sedgewick, Girouard, Davies and Mills JJ.

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in the Yukon Territory, which affirmed the judgment of the Gold Commissioner's Court of the Yukon Territory dismissing the plaintiffs' action with costs.

The questions raised upon the hearing of the motion to quash and the statutes and ordinances affecting them are stated in the judgments now reported.

*Latchford K.C.* for the motion. The action was instituted and final judgment rendered previous to the passing of the statute, 2 Edw. VII., ch. 35, providing for appeals to the Supreme Court of Canada from judgments of the Yukon Territorial Court sitting as a special Court of Appeal under the provisions of the ordinance of the Governor-General-in-Council of 18th March, 1901. The appeal from the decision of the Gold Commissioner was taken under the provisions of the fourth section of that ordinance and there can be no appeal inasmuch as the ninth section thereof declares that the Territorial Court judgments in such matters shall be final and conclusive. We refer to *Hurtubise v. Desmarteau* (1); *Williams v. Irvine* (2); *Taylor v. The Queen* (3); and the cases collected in *Hyde v. Lindsay* (4).

*Peters K.C.* contra. Independently of the statutes of Edward VII. this court has jurisdiction under the thirteenth section of chapter 11, of the statutes of 62 & 63 Vict., and the Supreme Court Act as amended to hear such appeals as the present one and, if the meaning or intention of the ninth section of the Ordinance of the Governor-in-Council is that such appeals shall be taken away, then that section is *ultra vires*.

The judgment appealed from is final so far as the territorial jurisdictions are concerned and, therefore, appealable under the Acts governing this court. This appeal cannot be taken away by any local territorial

(1) 19 Can. S. C. R. 562.

(2) 22 Can. S. C. R. 108.

(3) 1 Can. S. C. R. 65.

(4) 29 Can. S. C. R. 99.

legislation, even though it be by the Governor-General-in-Council acting under the powers delegated by the Parliament of Canada, so long as Parliament has not itself expressly granted that authority and, in the present instance, that has not been done.

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THE CHIEF JUSTICE dissented from the judgment of the majority of the Court dismissing the motion with costs.

SEDGEWICK J.—The respondents have moved to quash this appeal on the ground that this Court has no jurisdiction to entertain it. The majority of the judges are of the opinion that it has.

By the statute, 61 Vict., ch. 6 (1898) intituled “An Act to provide for the Government of the Yukon Territory,” it is provided,

Sec. 10. There is hereby constituted and appointed a Superior Court of Record in and for the said territory, which shall be called the Territorial Court.

By section eight it is enacted as follows :—

Subject to the provisions of this Act, the Governor-in-Council may make ordinances for the peace, order and good government of the territory and of Her Majesty’s subjects and others therein.

Section eleven is as follows :—

11. The law governing the residence, tenure of office, oath of office, rights and privileges of the judge or judges of the court, and the power, authority and jurisdiction of the court shall be the same, *mutatis mutandis*, as the law governing the residence, tenure of office, oath of office, rights and privileges of the judges, and the power, authority and jurisdiction of the Supreme Court of the North-west Territories, except as the same are expressly varied in this Act.

By the sixth section of the statute, 62 & 63 Vict., ch. 11, (1899) it is enacted as follows :—

Section 11 of the said Act is hereby repealed and the following substituted therefor :—

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11. The law governing the residence, tenure of office and oath of office of the judge or judges of the court, and the rights, privileges, power, authority and jurisdiction of the court and the judge or judges thereof, shall be the same, *mutatis mutandis*, as the law governing the residence, tenure of office and oath of office of the judges and the rights, privileges, power, authority and jurisdiction of the Supreme Court of the North-west Territories and of the judges of that court, except as the same are expressly varied by this Act.

And by sections seven and thirteen of the last mentioned Act it was enacted as follows:—

7. The Supreme Court of British Columbia is hereby constituted a Court of Appeal for the territory.

(2) An appeal shall lie from any final judgment of the Territorial Court to the judges of the said Supreme Court, sitting together as a full court, where the matter in controversy amounts to the sum or value of five hundred dollars or upwards, or where the title to real estate or some interest therein is in question, or the validity of a patent is affected, or the matter in question relates to the taking of an annual or other rent, customary or other duty or fee, or a like demand of a public or general nature affecting future rights, or in cases of proceedings for or upon mandamus, prohibition or injunction.

(3) The said Supreme Court and the judges thereof shall have the same powers, jurisdiction and authority with reference to any such appeal and the proceedings thereon as if it were an appeal duly authorized from a like judgment, order or decree made by the said Supreme Court or a judge thereof in the exercise of its ordinary jurisdiction.

13. An appeal shall lie to the Supreme Court of Canada from the judgment upon any appeal authorized by this Act of the Supreme Court of British Columbia, wherever such an appeal to the Supreme Court of Canada would have been authorized had the judgment appealed from been delivered by the Supreme Court of British Columbia in a like case in the exercise of its ordinary jurisdiction upon appeal in respect of cases originating in the courts of the said province.

2. An appeal shall also to the Supreme Court of Canada direct from any final judgment of the Territorial Court from which it is herein provided that an appeal may be taken to the Supreme Court of British Columbia, and the provisions of sections 8, 9 and 11 of this Act shall apply, *mutatis mutandis*, to such appeal.

On the eighteenth of March, 1901, the Governor General in Council, by virtue of the provisions of sec-

tion eight of "The Yukon Territory Act," above referred to, passed an ordinance for the purpose of governing the hearing and decision of disputes in relation to mining lands in the Yukon Territory. Sections one, four and nine of this ordinance are the only ones affecting the present motion and they are as follows :

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1. The Gold Commissioner shall have jurisdiction to hear and determine judicially all matters in difference in regard to entries for mining claims under regulations or in any way relating to mining property or mining rights upon Dominion lands in the said Territory ; also to adjudge any patent, lease or other instrument which purports by or on behalf of the Crown to grant or convey mining property or any estate or interest therein or any right with respect to or affecting such property to be void on the ground that the same was issued in error or improvidence or that the issue thereof was obtained through fraud.

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4. There shall be an appeal from any final judgment of the Gold Commissioner to the Territorial Court, of which, for all purposes of and incident to such appeals, the Gold Commissioner shall be deemed to be a member, having equal powers in all respects with the judges of the said court and sitting with them upon the hearing of such appeal ; provided that, if at any time hereafter a third judge of the Territorial Court is appointed to be resident at Dawson City, the Gold Commissioner shall cease to be a member of the said court for the purposes of such appeals.

9. The judgment of the Appeal Court as constituted by section 4 hereof, upon any such appeal, shall be final and conclusive.

From these sections it appears that a judgment of the Court of Appeal thereby constituted was to be "final." If it was intended by the use of that word "final" to exclude the appellate jurisdiction of the Supreme Court of British Columbia and of this court, the object of the framers of the ordinance has signally failed. It is only in judgments of the Territorial Court where there is finality that an appeal lies to the British Columbia court or to this court. If section nine of the ordinance had gone on to enact "and no appeal shall lie either to the Supreme Court of British

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Columbia or to the Supreme Court of Canada, notwithstanding anything contained in the Yukon Territory Act and the Act amending the same" that would, on elementary principles, be inoperative as no ordinances or regulations passed by the Governor in Council, repugnant to the express provisions of the Act of Parliament giving the subordinate authority jurisdiction to make them can have any legal effect.

For the purposes of the argument it may be admitted that, had there been an appeal from the Territorial Court to the Supreme Court of British Columbia and thence to this court, there would be no appeal here. In that case, the Supreme and Exchequer Courts Act, designating the cases in which an appeal lies to the Supreme Court of Canada would govern. But it is not necessary to decide the point as the appellants have adopted the second alternative provided by the amending Act of 1899 above set out, which gives to this court all the appellate powers which the British Columbia court would have had in case the appeal had been to it.

As to the contention of Mr. Latchford that the court from which this appeal is taken is not the Territorial Court but a specially constituted and independent tribunal, we cannot find anything either in the Act or ordinance referred to to support that view.

The motion will be dismissed with costs.

GIROUARD J.—I am of opinion that, independently of the recent statute, 1 Edw. VII. we have jurisdiction to hear this appeal under section thirteen of 62 & 63 Vict. ch. 11. Section nine of the Yukon Ordinance is *ultra vires* of the latter statute.

The motion to quash should be rejected with costs.

DAVIES J. concurred in the judgment dismissing the motion with costs for the reasons stated by His Lordship Mr. Justice Sedgewick.

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MILLS J. concurred in the judgment dismissing the motion with costs.

*Motion dismissed with costs.*

Solicitors for the appellants: *Woodworth & Black.*

Solicitors for the respondents: *Pattullo & Ridley.*

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