1959
Feb. 5
*Jun. 25

HER MAJESTY THE QUEEN (*Defendant*) ..... APPELLANT;

AND

LINCOLN MINING SYNDICATE LIMITED (*Plaintiff*) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Companies—Company removed from register—Escheat of land—Company dissolved within The Escheats Act, R.S.B.C. 1948, c. 112—Company restored to register under The Companies Act, R.S.B.C. 1948, c. 58—Whether company entitled to claim land under The Quieting Titles Act, R.S.C.B. 1948, c. 282—Application of maxim generalia specialibus non derogant.

*PRESENT: Kerwin C.J. and Taschereau, Cartwright, Martland and Judson JJ.

In 1944, the plaintiff company, incorporated under the laws of British Columbia, and which held title in fee simple to certain lands, was struck off the register of companies under what is now s. 208 of *The Companies Act*, R.S.B.C. 1948, c. 58, having failed to file annual returns. Some 12 years later, the company was restored to the register, application having been made under ss. 209 and 210 of the Act which allow such application if made within 20 years. Subsequently, the company sought a declaration as against the Crown that it was entitled in fee simple to the lands in question under *The Quieting Titles Act*, R.S.B.C. 1948, c. 282. The Crown opposed the application on the ground that the lands had escheated to it by virtue of s. 5 of *The Escheats Act*, R.S.B.C. 1948, c. 112, which provides that when a company is dissolved, its lands etc. are deemed to escheat to the Crown. The application was dismissed by the trial judge, but this judgment was reversed by the Court of Appeal.

Held (Cartwright and Martland JJ. dissenting): The company's application should be dismissed.

Per Kerwin C.J. and Taschereau and Judson JJ.: The provisions of *The Companies Act* are general in their nature and must give way to the particular enactments of *The Escheats Act*. Once the year provided for in that Act, following the dissolution, has expired the escheat was absolute.

Per Cartwright and Martland JJ., *dissenting*: A company dissolved, as was the plaintiff, as the result of being struck off the register under s. 208 of *The Companies Act* and thereafter, within 20 years, restored to the register pursuant to s. 209(1), does not at any time between those two events cease to exist or cease to be the owner of the property vested in it at the moment of the dissolution. The matter was not affected by s. 5 of *The Escheats Act*, because that section contemplates cases where a company is "dead for all purposes".

Even if the words "dissolved" and "dissolution" in s. 5 are wide enough to include dissolution in any manner, such as the one in this case, s. 209 should prevail as special legislation against s. 5 which is general legislation.

APPEAL from a judgment of the Court of Appeal for British Columbia[1], reversing a judgment of Ruttan J.

Appeal allowed, Cartwright and Martland JJ. dissenting.

W. G. Burke-Robertson, Q.C., for the defendant, appellant.

C. C. Locke, for the plaintiff, respondent.

The judgment of Kerwin C. J. and of Judson J. was delivered by

THE CHIEF JUSTICE:—This is an appeal by Her Majesty the Queen in the right of the Province of British Columbia against the judgment of the Court of Appeal of that province[1] which, by a majority, allowed an appeal from the

[1] (1958), 14 D.L.R. (2d) 659, 26 W.W.R. 145.

1959

THE QUEEN v. LINCOLN MINING SYNDICATE LTD.

Kerwin C.J.

decision of Ruttan J. The latter had dismissed the petition of Lincoln Mining Syndicate Limited (Non Personal Liability) under *The Quieting Titles Act*, R.S.B.C. 1948, c. 252, seeking a declaration that it was entitled in fee simple to certain lands and premises.

The syndicate was incorporated October 23, 1920, under the laws of British Columbia as a public company and shortly thereafter title in fee simple to those lands including surface and mineral rights was granted to it out of the New Westminster Registry Office. Under *The Companies Acts* in force the syndicate filed annual returns down to and including 1939 but, having failed to file returns for 1940 and 1941, it was struck off the register on November 16, 1944, pursuant to s. 205 of *The Companies Act*, R.S.B.C. 1936, c. 42, as amended in 1943. This is now s. 208 of R.S.B.C. 1948, c. 58, the relevant parts of which read:

> 208. (1) Where a company or extra-provincial company has failed to file with the Registrar for two years the annual report or any other return, notice, or document required by this Act to be so filed by it, or the Registrar has reasonable cause to believe that a company or extra-provincial company is not carrying on business or is not in operation, he shall mail to the company a registered letter notifying it of its default or inquiring whether the company is carrying on business or is in operation, as the case may be. For the purposes of this section a company shall be deemed to be in default with respect to its annual report if it has not filed an annual report within two years from the date of its incorporation, or, after the first report has been filed has not filed an annual report for two years from the date of the last report filed: Provided that there shall be added to the period of two years any extension of time granted under section 164 and a company that under that section has filed a statutory declaration and been granted relief by the Registrar shall be deemed to have filed an annual report.
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> (2) If within one month of mailing the letter no reply thereto is received by the Registrar, or the company fails to fulfil the lawful requirements of the Registrar, or notifies the Registrar that it is not carrying on business or in operation, he may, at the expiration of a further fourteen days, publish in the Gazette a notice that at the expiration of two months from the date of that notice the company mentioned therein will, unless cause is shown to the contrary, be struck off the register, and the company will be dissolved, or in the case of an extra-provincial company, will be deemed to be a company not registered under Part VII.
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> (4) At the expiration of the period of two months mentioned in subsection (2), the Registrar may, unless cause to the contrary is previously shown, strike the company off the register, and shall publish notice thereof in the Gazette, and on the publication of the notice in the Gazette the

company shall be dissolved, or, in the case of an extra-provincial company, shall be deemed to be a company not registered under Part VII: Provided that the liability (if any) of every director, manager, officer, and member of the company shall continue and may be enforced as if the company had not been struck off the register.

Sections 5 and 6 of *The Escheats Act*, R.S.B.C. 1948, c. 112, read:

5. (1) Where a corporation is dissolved, the lands, tenements, and hereditaments situate in this Province of which the corporation was seised, or to which it was entitled at the time of its dissolution, shall for all purposes be deemed to escheat to the Crown in right of the Province; and the law of escheat and the provisions of this Act shall apply in respect of those lands, tenements, and hereditaments in the same manner as if a natural person had been last seised thereof or entitled thereto and had died intestate and without lawful heirs.

(2) The Lieutenant-Governor in Council shall not, within a period of one year from the date of the dissolution of a corporation, make any grant or other disposition of any lands, tenements, or hereditaments of the corporation which escheat to the Crown.

(3) Where a corporation is, within a period of one year from the date of its dissolution, revived pursuant to any Act by order of any Court, the order shall have effect as if the lands, tenements, and hereditaments of the corporation had not escheated to the Crown, and, subject to the terms of the order, such lands, tenements, and hereditaments shall ipso facto vest in the corporation.

(4) The provisions of this section shall apply in respect of real estate of a corporation consisting of any estate or interest, whether legal or equitable, in any incorporeal hereditament, or of any equitable estate or interest in any corporeal hereditament, in the same manner as if that estate or interest were a legal estate in corporeal hereditaments.

6. The Lieutenant-Governor in Council may make any grant of lands, tenements, or hereditaments, which have so escheated or become forfeited, or of any portion thereof, or of any interest therein, to any person, for the purpose of transferring or restoring the same to any person or persons having a legal or moral claim upon the person to whom the same had belonged, or of carrying into effect any disposition thereof which such person may have contemplated, or of rewarding any person making discovery of the escheat or forfeiture, as to the Lieutenant-Governor in Council may seem meet.

In August of 1955 William F. McMichael petitioned the Lieutenant-Governor in Council pursuant to s. 6 to grant him the property here in question on the ground that it had escheated to the Crown and that he had a moral claim to it since he had paid the annual taxes thereon from 1939 to 1955 inclusive. In Order-in-Council no. 955, dated April 24, 1956, it was recited that the surface and mineral rights in the property had escheated to the Crown on November 16, 1945 and the Lieutenant-Governor in Council

1959

THE QUEEN v. LINCOLN MINING SYNDICATE LTD.

Kerwin C.J.

granted McMichael's petition but only so far as the mineral rights were concerned. The date November 16, 1945, was presumably inserted in view of the "one year from the date of the dissolution of a corporation" in subs. (2) of s. 5. McMichael has since renounced his claim to the mineral rights.

Less than a month later, on May 18, 1956, not the syndicate but McMichael, as a member thereof and who alleged he had been aggrieved by it having been struck off the register, applied to the Supreme Court of British Columbia for its restoration to the register under the provisions of ss. 209 and 210 of *The Companies Act,* R.S.B.C. 1948, c. 58, as amended. Paragraph 15 of the application states:

> 15. The Lieutenant-Governor in Council of the Province of British Columbia has alleged that the surface and mineral rights of the said Lots 186, 187 and 188 on November 16, 1945, escheated to Her Majesty the Queen in Right of the Province of British Columbia.

The application came on for hearing on June 4, 1956, but was adjourned to June 11 to permit service of notice of the application and the petition upon the Attorney-General of the Province. Service was effected but no doubt in view of the paragraph of the application set out above the Deputy Attorney-General wrote the solicitors for the applicant that he did not propose to oppose the application. The relevant parts of ss. 209 and 210, as amended, read as follows:

> 209. (1) Where a company or an extra-provincial company or any member or creditor thereof or any person to whom the company is under any legal obligation is aggrieved by the company having been struck off the register, pursuant to this Act or any former "Companies Act", the Court, on the application of the company or member or creditor, or any person to whom the company is under any legal obligation, may, subject to section 210 and if satisfied that the company was at the time of the striking-off carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence, or, in the case of an extra-provincial company, to be a company registered under Part VII, as if it had not been struck off: Provided that the Court shall not make an order:—
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> (*d*) In the case of a company other than an extra-provincial company having been struck off the register for a period of twenty years or more.

(3) A company may for the purposes of its restoration to the register hold such meetings and take such proceedings as may be necessary as if the company had not been dissolved, or in the case of an extra-provincial company as if the company were registered under Part VII.

210. (2) The Court may by an order restoring a company to the register give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the company had not been struck off, but, unless the Court otherwise orders, the order shall be made without prejudice to the rights of parties acquired prior to the date on which the company is restored by the Registrar.

I agree with Ruttan J. and Coady J. A. that the provisions of *The Companies Act* are general in their nature and must give way to the particular enactments of *The Escheats Act*. Section 5 of the latter relates to escheats of lands, tenements and hereditaments where they have been owned by a corporation which is dissolved. Special provision is made by subs. (3) where, within a period of one year from the date of its dissolution, a corporation is revived pursuant to any Act by order of any Court, that the order shall have effect as if the lands, tenements and hereditaments had not escheated to the Crown. Once the year has expired the escheat is absolute. These are special enactments referring only to escheats and the general provisions of *The Companies Act* above referred to cannot apply. As Coady J. A. points out, if s. 209 of *The Companies Act* applies, then in the event of a company being restored within one year subs. (3) of s. 5 of *The Escheats Act* is unnecessary because there would have been no need to provide by subs. (1) for an escheat which, by virtue of s. 209 of *The Companies Act,* had never occurred and for a re-vesting under subs. (3) of s. 5. I also agree with Coady J. A. that all the detailed provisions of ss. 8, 12, 13 and 15 of *The Escheats Act* were unnecessary if the argument on behalf of the respondent were to prevail.

I have not referred to the argument that *The Escheats Act* came into force later than *The Companies Act*. As pointed out by Lord Blackburn in *Garnett v. Bradley*[1], anybody who wishes to find an argument on either side about the repeal of a statute for inconsistency with a subsequent statute will find in two places in Plowden's Commentaries

[1] (1878), 3 App. Cas. 944 at 966.

1959

THE QUEEN v. LINCOLN MINING SYNDICATE LTD.

Kerwin C.J.

"many good and ingenious arguments, and he can pick out the arguments which make for the side he particularly wants to support". In the present instance the matter resolves itself into a consideration of the aims and objects of the sections referred to in *The Companies Act* and in *The Escheats Act* and in giving to them that construction which will best carry out the intention of the Legislature. It is perhaps needless to add that in *The Attorney General of the Province of British Columbia v. The Royal Bank of Canada and Island Amusement Company Limited*[1], this Court was concerned only with *The Companies Act* with respect to *bona vacantia* and that therefore that decision has no bearing on the matter here under discussion.

The appeal should be allowed without costs, the judgment of the Court of Appeal set aside and that of Ruttan J. restored.

TASCHEREAU J.:—On November 16, 1944, the Registrar for the Province of British Columbia struck the Lincoln Mining Syndicate off the Company's Register, pursuant to *The Companies Act,* for failure to file returns as required by the Act. At that time, the company was the registered owner in fee simple of lands described in a certificate of title issued by the department.

Under *The Companies Act,* when a company is struck off the register, it is *dissolved* (s. 208). Section 5 of *The Escheats Act,* R.S.B.C. 1948, c. 112, provides that when a company is dissolved, the lands, tenements and hereditaments of which the company is seized at the time of the dissolution, are deemed to escheat to the Crown in right of the Province, and the law of escheat, and all its provisions apply in respect of those lands, tenements and hereditaments.

On August 4, 1955, one William McMichael petitioned the Lieutenant-Governor in Council, pursuant to *The Escheats Act,* to grant him lots 186, 187 and 188, on the ground that the aforesaid lots had escheated to the Crown, and that he had a *moral claim* to the said lands, alleging that he, on behalf of the company, had paid taxes on the said lands for the years 1939 to 1955 inclusive, and by an

[1] [1937] S.C.R. 459, 3 D.L.R. 393.

Order in Council bearing date of April 24, 1956, Lieutenant-Governor granted to McMichael the mineral rights to the said three lots. On June 21, 1956, the company was restored to the register pursuant to the procedure outlined in ss. 209 and 210 of *The Companies Act* and amendments thereto.

In May, 1957, the Lincoln Mining Syndicate filed a petition under *The Quieting Titles Act* to obtain a declaration of title to the lands "which shall be conclusive as against all parties, including Her Majesty, and prayed that it be entitled to the lands in fee simple". This petition was dismissed by Ruttan J. but allowed by a majority judgment of the Supreme Court, Appeal Division[1].

I have come to the conclusion that this appeal should be allowed and the judgment of Ruttan J. restored. This case, I believe, must be governed by *The Escheats Act* which is a special enactment posterior to *The Companies Act*. It is true that the company was restored within twenty years, which is the limit provided in *The Companies Act*, and that s. 209 says that if restored, the company will be "deemed to have continued in existence as if it had not been struck off". But, on the other hand, under *The Escheats Act*, the company had to be revived within one year, and as this has not been done, there has been no reinvesting as provided for in s. 5, and the escheat became absolute. Eleven years elapsed between the date of the dissolution of the company and the date of its revival.

I therefore agree with the reasoning of the Chief Justice, and I would allow the appeal without costs and restore the judgment of Ruttan J.

The judgment of Cartwright and Martland JJ. was delivered by

CARTWRIGHT J. (*dissenting*):—The issues, the facts and the relevant statutory provisions are set out in the reasons of the Chief Justice and do not require repetition.

It will be convenient to examine first the effect of the order of McInnes J. made on June 11, 1956, restoring the respondent to the register, having regard to the terms of s. 208 (formerly s. 205) and s. 209 of *The Companies Act*,

1959

THE QUEEN v. LINCOLN MINING SYNDICATE LTD.

Cartwright J.

R.S.B.C. 1948, c. 58, and then to consider to what extent the matter is affected by the provisions of *The Escheats Act*, R.S.B.C. 1948, c. 112.

The case of *Attorney-General of British Columbia v. The Royal Bank of Canada et al*[1], dealt with the right of the Crown to claim as *bona vacantia* moneys of a dissolved company and not with the question of the escheat of lands but the judgments delivered in the Court of Appeal for British Columbia and in this Court contain statements as to the meaning and effect of s. 167 of *The Companies Act*, R.S.B.C. 1924, c. 38, and s. 199 of *The Companies Act*, 1929 (B.C.), c. 11, which are the predecessors of, and correspond in all material respects to, s. 208 and s. 209 of the present Act, which appear to me to be of assistance in the solution of the problem raised on this appeal.

In that case The Island Amusement Company Ltd. was struck off the register on October 25, 1928, under s. 167. On April 5, 1935, it was restored to the register by an order of Robertson J. which provided in part:

> It is ordered that the name of the above named Island Amusement Company Limited be restored to the register of companies for a period of one year from the date of its restoration to said register for the purpose of enabling the company to be wound up voluntarily, and that pursuant to the Companies Act the company shall be deemed to have continued in existence as if its name had never been struck off, without prejudice however to the rights of any rights which may have been acquired prior to the date on which the company is restored to the register.

Between the dates mentioned the Crown had asserted a claim to a sum of money standing to the credit of the company's account in The Royal Bank of Canada as *bona vacantia*. The action brought by the Attorney-General seeking to enforce this claim was dismissed by Robertson J. and his judgment was affirmed by the Court of Appeal for British Columbia and by this Court.

The judgment of the majority in the Court of Appeal was delivered by M. A. Macdonald J. A. It appears from his reasons at p. 261 that it had been conceded, or was assumed for the purposes of his judgment, that the result of the company being struck off the register was to give title to the Crown, "for the time being at all events" and

[1] (1937), 51 B.C.R. 241, 1 D.L.R. 637; affirmed [1937] S.C.R. 459, 3 D.L.R. 393.

the learned justice stated the question to be,—"by the terms of the statute, expressly or by implication did the money revert to the company on revival pursuant to the order?" He went on to hold that this question should be answered in the affirmative. At p. 263, he says:

It follows that the Crown's right depends upon the interpretation of the relevant sections of the Act. We turn therefore to the meaning of the words in section 199 providing that after the company is restored to the register it shall be "deemed to have continued in existence as if it has not been struck off." If it had not been struck off it would have continued in existence with all its assets and the intention was to enable it to resume its former status. If that is not obvious, for further light we may look at the whole Act to ascertain its general purport and if it is reasonably possible by interpretation to advance the object in view we should do so. Clearly the Legislature did not intend to stultify itself by providing for the restoration of a company to the register if, deprived of all its property, it would be quite useless to do so. I think, for the reasons given by the trial judge, the intention is clear. It was not intended that companies should be restored in a truncated form. Life, in its old form and stature was to be restored as if it had never ceased. To do so the custodian of the fund, His Majesty, in right of the Province, must restore it because that, in the language of the cases presently referred to, was the intendment of the Act.

In this Court, Kerwin J., as he then was, wrote reasons concurred in by Duff C. J. and Rinfret and Hudson JJ. Having decided, as did Macdonald J. A., that while the order restoring the company to the register was made under s. 200, (now s. 210) its effect was governed by s.199 (now s. 209), he continued at p. 469:

Reading these sections together, therefore, the effect of the order was, as stated in subsection 1 of section 199, that "thereupon the company shall be deemed to have continued in existence . . . as if it had not been struck off.

The enactment in subsection 2 of section 200 that "unless the Court otherwise orders, the order shall be made without prejudice to the rights of parties acquired prior to the date on which the company is restored by the Registrar," when read in the light of the terms of section 199 that "the company shall be deemed to have continued in existence" causes no difficulty as I have concluded that the making of the order in 1928, striking the company from the register, never gave the Crown a right to the money as *bona vacantia*. (It should be added that the insertion in the order restoring the company to the register, of the "without prejudice" clause adds nothing to the effect of subsection 2 of section 200.)

Such a right arises only when there is no other owner, and how can it be said that the money on deposit was without an owner when the company was not really dead for all purposes? By subsection 1 of section 199, the company itself may apply for the order, and by subsection 3 the company "may for the purposes of its restoration to the register hold such

1959

THE QUEEN
v.
LINCOLN MINING SYNDICATE LTD.

Cartwright J.

meetings and take such proceedings as may be necessary as if the company had not been dissolved . . ." Added to which is the explicit statement as to the effect of the order.

at pages 471 and 472:

The effect of the removal order of October 25th, 1928, was by the terms of section 167 of the Act then in force (R.S.B.C. 1924, chapter 38) that the company was struck from the register and "dissolved". In view of the provisions of section 168, which would apply to any order of the court restoring the company to the register, made while that Act was in operation, and of sections 199 and 200 of the relevant Act of 1929, can it be said that the "dissolution" was an end of the company for all purposes, and particularly for the purpose of the applicant's contention that the money on deposit in the bank ceased to have an owner, so as to permit the operation of the doctrine of *bona vacantia?* I conclude that the answer must be in the negative and that is sufficient to dispose of the present appeal.

(It should be noted that in this passage section 167 corresponds to the present s. 208 and sections 168 and 199 correspond to the present s. 209).

and at page 473:

However, for the reasons already given, I am of opinion that this money never was, under the circumstances, *bona vacantia.* On the proper constructions of sections 199 and 200 of the 1929 Act the doctrine of *bona vacantia* does not apply so as to include money of a company which, while "dissolved", cannot be taken to be dead for all purposes when, by the very Part of the Act that refers to dissolution, provision is also made for an order of revivor, with the consequence that the company is deemed to have continued in existence as if it had not been struck off.

Davis J. wrote a separate concurring judgment, in the course of which he says at p. 476:

Section 167 of the British Columbia statute permits the Registrar of Companies to strike off the register any company which has failed to "file any return or notice or document required to be filed with the Registrar." The language is sufficiently comprehensive to include defaults of the slightest nature—for instance, mere omission to make some annual or other return called for by the Act. Having regard to the provisions of the entire statute the dissolution referred to in section 167 necessarily excludes in my opinion "a general dissolution", to adopt the term used by Lindley on Companies, 6th ed. p. 821. The company does not "become extinct without successor or representative," to use the words of Wright J. in the Higginson case. The statute plainly negatives a complete dissolution whereby the company becomes extinct because the statute clearly recognizes that subsequent to the dissolution referred to in section 167 the company itself may apply to the court to be restored and for that purpose may hold meetings and take proceedings as if it had not been dissolved. In that view of the statute there was no such dissolution of the company in this case as to entitle the Crown to acquire ownership of the money on deposit at the bank as against the company and its creditors.

It will be seen that this case decides that, on their true construction, the effect of the words in what is now s. 208(4) of *The Companies Act* "the company shall be dissolved" is that, during the period of twenty years mentioned in s. 209(1)(*d*), the company "is not really dead for all purposes", that the "dissolution" resulting from being struck off the register is not an end of the company for all purposes and particularly does not result in its personal property ceasing to have an owner.

I find myself in complete agreement with this decision, but even were it otherwise I should feel bound to follow it not only because of its high authority but also because the Legislature has in the Revised Statutes of 1948 re-enacted the relevant sections without any alteration in wording which could affect this question of construction. The effect of such re-enactment after judicial construction was discussed in our recent judgment in *Fagnan v.Ure*[1], particularly at p. 382, where the following statement of James L. J. in *Ex parte Campbell; In re Cathcart*[2], was adopted:

> Where once certain words in an Act of Parliament have received a judicial construction in one of the Superior Courts, and the Legislature has repeated them without alteration in a subsequent statute, I conceive that the Legislature must be taken to have used them according to the meaning which a Court of competent jurisdiction has given to them.

While this rule of construction has been modified by Parliament and by some of the Provinces (e.g. by s. 21(4) of *The Interpretation Act,* R.S.C. 1952, c. 158) this has not been done in British Columbia.

It follows in my opinion that, if the relevant provisions of *The Companies Act* alone are considered, the respondent's existence never came to an end and it remained throughout the time between its "dissolution" flowing from its being struck off the register and the making of the order which resulted in its being "deemed to have continued in existence as if it had not been struck off" in a state, perhaps, of suspended animation but sufficiently alive to retain the ownership of all its property. I can find no basis in reason for holding that if it had sufficient existence to remain the owner in being of its personalty it would not also remain the owner in being of its realty.

[1] [1958] S.C.R. 377, 13 D.L.R. (2d) 273.
[2] (1870), L.R. 5 Ch. 703 at 706.

1959

THE QUEEN v. LINCOLN MINING SYNDICATE LTD.

Cartwright J.

Turning now to *The Escheats Act,* the appellant stresses the provisions of s. 5 and argues that when the respondent was struck off the register on November 16, 1944, it was "dissolved" within the meaning of that word in s. 5(1), that thereupon the lands in question in this action were "for all purposes deemed to escheat to the Crown in the right of the Province" and that the law of escheat and the provisions of the Act applied in respect of those lands "in the same manner as if a natural person had been last seised thereof or entitled thereto and had died intestate and without lawful heirs."

The argument proceeds that subss. (2) and (3) providing that escheated lands shall not be disposed of within a year from the date of the dissolution and that where a corporation is revived pursuant to any Act by order of any Court within such year the order shall have effect as if the lands had not escheated and the lands shall *ipso facto* vest in the corporation, show by necessary implication the intention of the Legislature that after the year has expired the escheat is absolute and is unaffected by any order reviving the corporation.

That there are difficulties in making a completely satisfactory reconciliation of the provisions of s. 5 of *The Escheats Act* with ss. 208 and 209 of *The Companies Act* is manifest from the differences of opinion in the Courts below; but a consideration of all the relevant provisions of the two acts leads me to the conclusion that the opening words of s. 5 of *The Escheats Act,*—"Where a corporation is dissolved" contemplate cases in which the corporation is, to borrow the words of Kerwin J. quoted above, "dead for all purposes" so that, in the words quoted by Davis J., it has "become extinct without successor or representative".

Lord Sumner in *The King v. Attorney-General for British Columbia*[1] comments on how closely analogous to *bona vacantia* is the case of escheats and continues:

> Except for the difference between a right to lands, the title to which is ultimately in the Crown, and a right to personalty, which is complete in a private person, if there be a private person entitled, the principle on which bona vacantia and escheats fall to the Crown is the same, that is that there being no private person entitled, the Crown takes.

[1] [1924] A.C. 213 at 219, [1923] 4 D.L.R. 690.

The right of the Crown to take, in the one case the goods and in the other the lands, is in both cases conditional upon there being no private owner in existence entitled thereto. I have already indicated my view that it has been authoritatively determined that a company "dissolved", as was the respondent, as a result of being struck off the register under what is now s. 208 of *The Companies Act* and thereafter, within twenty years, restored to the register pursuant to s. 209(1) does not at any time between those two events cease to exist or cease to be the owner of the property vested in it at the moment of dissolution. It would, in my opinion, require an explicit provision to bring about the startling result that lands owned by an existing person or corporation should while the owner continues in existence escheat to the Crown.

For the above reasons I have reached the conclusion that the appeal fails.

I wish to add, however, that if, contrary to the opinion that I have expressed, the right view should be that the words "dissolved" and "dissolution" in s. 5 of *The Escheats Act* are wide enough to include dissolution in any manner, I would nonetheless be of the opinion that the judgment of the Court of Appeal should be affirmed. On this hypothesis I would be in general agreement with the reasons of Davey J. A. In particular it appears to me that the case would be governed by the rule expressed in the maxim *generalia specialibus non derogant,* for, as between the two, s. 209 of *The Companies Act* appears to me to be the special and s. 5 of *The Escheats Act* the general legislation. The latter, on the present hypothesis, includes every type of dissolution of corporations seised of lands in British Columbia and provides relief from escheat within a year on certain conditions. The operation of s. 209, on the other hand, is confined to companies incorporated under *The Companies Act* of British Columbia and to such of the companies so incorporated as are "dissolved" in a particular manner that is being struck off the register. As to this special class s. 209 provides that on a company being ordered to be restored to the register it shall thereupon be deemed to have continued in existence as if it had not been struck off. If the company had not been struck off and had continued

1959

THE QUEEN v. LINCOLN MINING SYNDICATE LTD.

Cartwright J.

in existence it is obvious that there would have been no escheat. The result of the order under s. 209 in the special cases to which that section relates is that the company is to be regarded as never having been dissolved and it has no need to look for relief in the provisions of *The Escheats Act*.

One reason that s. 5 of *The Escheats Act* was framed in terms so wide as to cover *prima facie* every possible case of dissolution of a corporation seised of lands in British Columbia may be that its primary purpose was to remove the doubts which had long existed as to whether undisposed of lands of which the last owner was an extinct corporation escheated to the Crown or reverted to the grantor who had conveyed them to the corporation. As to this it is sufficient to refer to Halsbury, 1st ed., vol. 11, p. 25, s. 48:

> There is some conflict of authority on the question whether the freehold lands of a corporation which has been dissolved escheat to the Crown or the mesne lord, or whether they revert to the grantor. The weight of authority seems to be in favour of the latter view.

and to Armour on Real Property, 2nd ed. 1916, at p. 299:

> Before concluding this head of escheats there must be mentioned one singular instance in which lands held in fee-simple are not liable to escheat to the lord, even when their owner is no more, and hath left no heirs to inherit them. And this is the case of a corporation; for if that comes by any accident to be dissolved, whilst holding the lands and before alienation, the donor or his heirs shall have the land again in reversion, and not the lord by escheat; which is, perhaps, the only instance where a reversion can be expectant on a grant in fee-simple absolute.

Whether or not this was the reason for the form in which s. 5 or its predecessor s. 3(*a*), added by 1924 (B.C.), c. 18, s. 2, was drafted, it appears to me that, in relation to the question raised in this appeal, it is clear that s. 5 of *The Escheats Act* is the general and ss. 208 and 209 of *The Companies Act* are the special legislation.

I would dismiss the appeal without costs.

Appeal allowed without costs,

CARTWRIGHT *and* MARTLAND JJ. *dissenting.*

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