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*Feb. 15.
*May 31.

THE ATTORNEY-GENERAL FOR BRITISH COLUMBIA (DEFENDANT)..... APPELLANT;

AND

HIS MAJESTY THE KING (PLAINTIFF)..... RESPONDENT;

AND

R. P. RITHET (DEFENDANT).

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

Statute—Construction—"Royalties"—Bona vacantia—B. N. A. Act, (1867) *ss.* 102, 109.

The word "royalties," in section 109 of the B.N.A. Act, must be construed in its primary and natural sense as the English equivalent of "Jura regalia" and its scope is not limited by its association with the words "lands, mines and minerals." *Bona vacantia* fall within the meaning of that term and therefore belong to the provinces. Davies C.J. *contra.*

APPEAL from the judgment of the Exchequer Court of Canada, maintaining the respondent's action.

The material facts of the case and the questions in issue are fully stated in the judgments now reported.

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* PRESENT:—Sir Louis Davies C. J. and Idington, Duff, Anglin, Brodeur and Mignault JJ.

J. A. Ritchie K.C. for the appellant.—The term "royalties" is not limited to escheats or something arising out of land but should be construed in its full natural and primary sense.

E. L. Newcombe K.C. and *C. P. Plaxton* for the respondent.—The scope of the word "royalties" ought to be limited by reference to the subjects with which it is found associated in section 109 B.N.A. Act. The term includes only those royalties which are connected with "lands, mines and minerals." The qualifying words "the property of the province," attached to the enumeration in section 109 have the effect of confining the operation of that section to subjects in respect of which at Confederation the province not only possessed the power of appropriation but had also exercised that power.

THE CHIEF JUSTICE (dissenting).—The question to be determined in this case is whether the sum of $7,215, representing the proceeds of certain assets and effects in the province of British Columbia agreed by both parties to be *bona vacantia* belongs to the Province of British Columbia or to the Dominion of Canada. The answer to this question depends upon the construction to be placed upon sections 109 and 126 of the "British North America Act, 1867."

The learned President of the Exchequer Court held

that the meaning of sec. 109 was to pass to the provinces royalties arising from "lands, mines, minerals" (and) "royalties" limited to escheats or something arising out of lands as referred to in sec. 1 of the statute 15-16 Vict. (and) did not think it was ever in contemplation that under that term "Royalties" all royalties of every kind, including *bona vacantia*, were left to the provinces under the provisions of the statute.

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After carefully reading the several judgments of the Judicial Committee which deal with the construction of the two sections, and having given the question before us my best consideration, I have reached the same conclusion.

Mr. Newcombe on behalf of the Crown submitted that the legislature of British Columbia having had power before and at the union of that province with Canada to appropriate the casual revenue arising within the colony from *bona vacantia*, with the assent of the Crown, it follows, whether the power was exercised or not, that the casual revenues from this source fall within sec. 102 of the B.N.A. Act and, therefore, belong to the Consolidated Revenue Fund of Canada, unless they be part of the revenue covered by the words of exception in that section.

In *Attorney-General of Ontario* v. *Mercer* (1), the Earl of Selborne delivering the judgment of the Judicial Committee, said, at page 775:

> The words of exception in sec. 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 upon them by the Act" It is with the former only of these two kinds of revenue 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 Provincial Legislatures by sec. 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 belong to the several provinces of Canada, Nova Scotia, and New Brunswick, at the Union * * * shall belong to the several provinces of Ontario, Quebec, Nova Scotia and New Brunswick, in which the same are situate or arise," etc.

The Judicial Committee in that case held that "royalties" in this section included the revenue arising from escheated lands. In the *Precious Metals*

(1) 8 App. Cas. 767.

Case (1), that Committee held that it reserved to the provinces the revenues arising from gold and silver mines. In neither of these cases did the Judicial Committee feel called upon to decide whether the word "royalties" in sec. 109 extends to other royal rights besides those connected with or arising out of "lands, mines and minerals." The question now presented is whether "royalties" in this section includes the casual revenue arising from *bona vacantia* in British Columbia.

The Judicial Committee seems to have concluded the question adversely to the province in the interpretation which it has put upon said sec. 109 in the cases which have come before it. In *Mercer's Case* (2) the Judicial Committee uses language as to the object and effect of the word "royalties" which limits the word to *Royal territorial rights*. This meaning is confirmed by Lord Watson in *St. Catharines Milling and Lumber Co.* v. *The Queen* (3), when, at page 58, referring to sec. 109, he said:

> Its legal effect is to exclude from the "duties and revenues" appropriated to the Dominion, all the *ordinary territorial* revenues of the Crown arising within the provinces. That construction of the statute was accepted by this Board in deciding *Attorney-General of Ontario* v. *Mercer* (2).

If this be a correct and comprehensive interpretation of the object and effect of sec. 109, and I am disposed to think it is, then it cannot apply to royal rights which are not territorial, such as rights in respect of personal property, e.g., *bona vacantia* The alternative contention would seem to be that "royalties" must be understood in an unlimited sense—that is to say as comprehending not merely

(1) *Attorney General of British Columbia* v. *Attorney General of Canada* 14 App. Cas. 295.

(2) 8 App. Cas. 767.

(3) 14 App. Cas. 46.

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all *royal territorial revenues*—i.e., the revenue arising from lands, mines, minerals—but also all other royal revenues.

In the result, I have reached the conclusion that the term "royalties" in section 109 following the words "lands, mines, minerals," should be construed as limited to royalties incident to or arising out of the preceding words. In other words, the term "royalties" extends to such as arise out of territorial rights only, and does not extend to *bona vacantia* such as are in question in this action.

The Judicial Committee in the cases I have referred to, in accordance with its usual practice, was careful to confine its actual decision to the questions specially before it for decision in each case. But the observations used alike by Lord Selborne and by Lord Watson, which I have quoted, are such as to satisfy my mind at any rate that the true construction of the section is such as I have stated.

IDINGTON J.—A company incorporated in England in 1871 to carry on business in British Columbia having, in the exercise of such powers as given it in that regard, acquired property in that province, of which the sum of $7,215.04 proceeds thereof remained in the hands of respondent Rithet some time after the time of the dissolution of the said company and later death of its liquidator without any special provision in law for the disposition of said balance.

Mr. Rithet applied to English representatives of the Crown, and in turn was referred by such to those in British Columbia or Canada.

Hence proceedings were taken in the Exchequer Court here by the Dominion authorities as against Rithet and the Attorney-General of British Columbia.

The case was tried before Sir Walter Cassels J. of that court who rendered judgment on the 22nd January, 1918, awarding the said money, less costs of Mr. Rithet, to the respondent on behalf of the Dominion.

The Attorney-General for British Columbia appeals here from that decision, claiming that such *bona vacantia* belong to the Crown on behalf of that province.

We are not enlightened by way of evidence or admissions from what source this balance of money now in question was derived, or exactly when it was realized.

The same kind of commendable industry as was devoted to produce the interesting results put before us in the case and appendix possibly would have disclosed that the original source of the money was an exploitation of the natural resources of the province, now in law beyond dispute belonging to it, such as the precious metals, for example, and realized upon since the dissolution of the company.

The exact date of the conversion thereof into money might in relation to the actual facts of the date of the extinction of the company and legal authority of any one to represent it have shed some light upon the basic facts, or what should have been looked upon as the basic facts, to which the relevant law should be applied. It may have been that the conversion into money took place after the property had become *bona vacantia* and, under such circumstances, as to entitle appellant beyond doubt to recover same.

The converse speculation as to whether or not the conversion was of property to which the Imperial authorities on behalf of the Crown could have claimed, under the circumstances, upon the actual facts if disclosed, might have put the respondent on behalf of the Dominion out of court.

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We are deprived of the instruction or perhaps amusement which a close investigation might have led to, and must, leaving appellant in future to see that his province is adequately protected by administrative or legislative measures, proceed on the assumption that the *bona vacantia* in question must be of some class that is neither land, mines or minerals, but may be of the class which can be properly described as within the class named "Royalties" in section 109 of the B.N.A. Act of 1867, which reads as follows:—

> 109.—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.

I am clearly of the opinion that the word "royalties" as used in that section never was intended to be given only the narrow and limited interpretation and construction that is contended for by counsel for the respondent on behalf of the Dominion.

I cannot conceive of the men who in fact framed the scheme of government to carry out which this Act was enacted, listening for a moment to such a contention, unless to laugh at it.

In the *Mercer Case* (1), Lord Selborne delivering the judgment of the Judicial Committee of the Privy Council, spoke as follows:—

> 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

(1) 8 App. Cas. 767 at p. 778.

minerals it here necessarily signifies rights belonging to the Crown *jure coronae*. 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, *in voce* "royalties" Cowell's "Interpreter" Wharton's Law Lexicon; Tomlins' and Jacobs' Law Dictionaries.) *"Regalia"* and *"regalitates"* according to Ducange, are *"jura regia;"* and Spelman (Glos. Arch.) says, *"Regalia dicuntur jura omnia ad fiscum spectantia."* The subject was discussed with much fullness of learning, in *Dyke v. Walford* (1), 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, ibid, p. 480) is indisputable; it must also be *regale*, 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 statememt of the law their agree, and they consider it to have been, in substance, affirmed by the judgment of Her Majesty in Council in that case.

Part of that was quoted by Lord Watson approvingly in the *Precious Metals Case* (2).

Needless to say these cases did not decide the question raised herein, but these *dicta* from high authorities point the way in which we should go to interpret and construe such an Act as that now in question; I respectfully submit that was not the path followed by respondent or this litigation never would have arisen.

The said *dicta* indicate the trend of thought I have sought to apply in my perusal of this case which consists chiefly of argument.

Reading, in that spirit the word "royalties" which the conjunction "and" in said section 109 indicates to be given a separate and distinctly additional item

(1) 5 Moore P.C. 434.

(2) 14 App. Cas. 295 at p. 304.

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of subject matter or class of revenue, to be assigned each of the respective provinces, I conclude that the appellant province is entitled by such reading alone to the *bona vacantia* in question.

There is no doubt of its being entitled under the terms of its union with the Dominion to that much.

And the articles to which we have to refer to find the terms of the Union with the Dominion, indicate to me, that if British Columbia had, before the Union, any greater rights in regard to such a subject as that now in question, she did not lose them by reason of the Union.

The respective rights in this regard of the several provinces which originally constituted the Dominion may not have been identically the same, but the law enacted in 15-16 Vict., c. 39, ss. 1 and 2, put all such colonies as British Columbia on the same footing in that regard, unless wherein otherwise provided for.

British Columbia's history I need not follow. She, at least by the time of her union with Canada, had acquired the right to assert the right given, to claim and collect such sources of revenue as now in question.

I repeat I cannot find that she lost, by the Union, any such right.

I cannot agree with Mr. Newcombe's argument that some legislative enactment was necessary before the Union. The power to enact or assert was continued, and is all she needs to rest upon herein.

But it is the sections 126 and 146 of the B.N.A. Act which must be read and applied, as those by and through which the negotiations which took place, under the latter, before reading section 102 which only gives the Dominion that which is left after such adjustment.

The legal history of that Union is to be found in the pages LXXXIV and CVII of the Orders in Council preceding the Dominion Statutes for 1872.

Properly read and considered along with other material above referred to, I submit with great respect that it seems to me there is no foundation for the judgment appealed from.

The argument of Mr. Ritchie before the Exchequer Court relative to the powers assigned the provinces over property and civil rights, deserves more attention than it got before us. For let any one who has considered the questions from that point of view and all that succession duties mean, and, in the last analysis, the fundamental question of the right in or to property, and see how easy it is for the local legislature to take care not only of the property of the intestate, who has only remote next of kin, but also by same power to avoid the need of any consideration of failure of heirs-at-law or next of kin by supplying a substitute therefor, and then it would appear that the contention set up herein is hardly worth while.

I think this appeal should be allowed with costs, if any, to be allowed respondent Rithet, to be paid by his co-respondent, or out of the fund.

If there is an understanding, as probably there is, that the other parties are not to recover from each other costs, neither ought to recover costs.

Possibly there should be no costs directed except as to Mr. Rithet.

DUFF J.—Both the Dominion and the Province concur in presenting the view which the very able argument on behalf of the Dominion sufficiently establishes that the hereditary casual revenues of the Crown including *bona vacantia* arising within the

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limits of the Province were included in the "duties and revenues" over which the Province had power of appropriation before the Union; and consequently the question to be determined is whether the word "royalties" in sec. 109 embraces *bona vacantia*. The scope of that expression was the subject of consideration by the Judicial Committee in *Attorney-General* v. *Mercer* (1). But the question upon which we have now to pass was left undecided. In effect their Lordships' view expressed in that case, in so far forth as presently relevant, is perhaps most clearly disclosed in the following passage from the judgment delivered by Lord Selborne taken from p. 778 of the report:—

> 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 *jure coronae*.

On behalf of the Dominion it is contended that the scope of the word "royalties" ought to be limited by reference to the subjects with which it is "found associated" in sec. 109; that is to say that it includes only those royalties which are connected with "lands, mines and minerals."

The object of the provisions of the B.N.A. Act beginning with sec. 102 dealing with the distribution of property between the provinces and the Dominion was, as their Lordships pointed out in *Mercer's Case* (1), the attribution of Royal Rights for the purposes of revenue and government as part of a broad political

(1) 8 App. Cas. 767.

scheme. I can perceive no reason why the word "royalties" occurring in this enumeration of the assets assigned to the provinces should not be given its full natural sense—"its primary and appropriate sense"—without restriction. If the intention had been to express the limited meaning the Dominion seeks to ascribe to the term it would have been easy to employ language more plainly limited in its scope. In effect the adoption of the Dominion construction involves, I think, the addition of some qualifying words to the language of the statute.

Mr. Newcombe also argued that the qualifying words, "the property of the province," attached to the enumeration in sec. 109 have the effect of confining the operation of that section to subjects in respect of which at Confederation the province not only possessed the power of appropriation but had also exercised that power. Admittedly *bona vacantia* had not up to that time been the subject of any special legislation or of any special appropriation to the public purposes of the colony; but I think the suggested consequence does not follow. As Lord Watson points out in delivering the judgment of the Judicial Committee in the *Liquidator of the Maritime Bank* v. *Receiver General of New Brunswick* (1), the title to the property disposed of by this provision was, and after Confederation remained, in the Queen as Sovereign Head of the province; it was the property of the province in the sense only that the legislature and government of the province had been invested with the power of appropriation over it. That I think, is the sense in which the word "property" is used in sec. 109.

The appeal ought, I think, to be allowed.

(1) [1892] A. C. 437 at pp. 443 and 444.

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ANGLIN J.—It is common ground that the monies paid into court by the defendant Rithet are *bona vacantia*. The parties are also agreed that the province of British Columbia prior to entering Confederation had the right to appropriate casual revenues of the Crown arising within that colony, other than *droits* of the Crown and *droits* of Admiralty (15-16 V. (Imp.) c. 39, s. 2), and that revenues arising from *bona vacantia* did not fall within either exception. All claim to the property in question has been expressly renounced by the Imperial authorities. That it belongs either to the provincial government of British Columbia or to the Dominion government may therefore be taken for granted.

The question at issue is whether *bona vacantia* are "royalties" reserved to the province by s. 109 of the "British North America Act," and, as such, excepted from s. 102 and within s. 126 of that statute. The solution of that question depends upon the scope of the word "royalties" in s. 109. Is it used, as Mr. Ritchie, representing the Attorney-General of British Columbia, contended, in its primary and natural sense, or is it used, as Mr. Newcombe argued on behalf of the Dominion government, in a sense limited by its association with the words "lands, mines, minerals?" The latter view found favour with the learned President of the Exchequer Court.

Section 109 reads as follows:—

> 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 and 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 trust existing in respect thereof and to any interest other than of the Province in the same.

The applicability of this section to the province of British Columbia is of course conceded.

While in s. 102 of the "British North America Act" we find the clause

> over which the respective legislatures had and have the power of appropriation,

and in s. 109 the phrase,

> belonging to the several provinces * * * at the Union,

I cannot seriously doubt that royalties of the class which the provincial legislatures had the right to appropriate were royalties "belonging" to the provinces in the sense in which "belonging" is used in s. 109.

"Lands, mines (and) minerals" actually "belonged" to the several provinces at the Union. Stricty speaking, royalties (such e.g. as escheats—*The Mercer Case*), (1) belong to a province only when they come into existence upon the occurrence of the circumstances out of which they arise—in the case of an escheat, the death of the owner of land intestate and without heirs. The abstract right to them is what "belonged" to the several provinces at the Union. Hence the use, in the latter part of s. 109, of the two verbs "are situate" and "arise"—the former applicable to "lands, mines (and) minerals," the latter to "royalties."

That *bona vacantia* fall within the term "royalties" *regalitates, jura regalia* or *jura regia*, when used without restriction, is authoritatively settled in *Attorney-General v. Mercer* (1), where the holding to that effect in *Dyke & Walford* (2), is accepted and a passage from the argument of Mr. Ellis in support of that view (p. 480) is expressly approved.

(1) 8 App. Cas. 767, at pp. 778-9. (2) 5 Moore P.C. 434.

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Although their Lordships of the Judicial Committee have twice had to consider the scope and meaning of the term "royalties" as it occurs in s. 109, in accordance with their well established practice when dealing with provisions of the "British North America Act," they, on each occasion, abstained from further definition of it than was necessary for the determination of the case actually before them. Thus, in the *Mercer Case* (1), they held that it extended, at all events, to all revenues arising from prerogative rights of the Crown in connection with "land" as well as "mines" and "minerals." In the *Precious Metals Case* (2), they held that a conveyance by the province of certain "public lands" did not imply a transfer of revenue arising from the prerogative rights of the Crown in regard to precious metals found therein, which belong beneficially to the province, not as mines or minerals and not as an incident of the land, yet under s. 109 and therefore as "royalties." While their Lordships were careful in these two cases not to say that the term "royalties" is used in sec. 109 in its unrestricted sense, it may I think be gathered from the general tenor of the judgments that they inclined to the belief that its signification is not limited by its association with the words, "lands, mines, minerals." Thus in the *Mercer Case* (1)

> 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;

and they add

> 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 of the context.

(1) 8 App. Cas. 767. (2) 14 App. Cas. 295.

In the *Precious Metals Case* (2), while they said (pp. 304-5)

> it is not necessary for the purpose of this appeal to consider whether the expression "royalties" as used in section 109 includes *jura regalia* other than those connected with lands, mines and minerals,

they pointed out that "mines" and "minerals" in the sense of sec. 109 cover only the baser metals, which are incidents of land, and that the prerogative right in regard to precious metals is a *jus regale*, and as such not an accessory of land. But their Lordships add that the right to "lands" granted by the province to the Dominion Government by the 11th article of Union did not, to any extent, derogate from the provincial right to royalties connected with mines and minerals under sec. 109 of the "British North America Act." (p. 305) thus indicating that in their view the *jus regale* in regard to the precious metals is, in some sense, a right connected with "mines" and "minerals," notwithstanding that the latter term as used in sec. 109 comprises only the baser metals.

I find great difficulty in appreciating the force of the argument in favour of restricting the meaning of the word "royalties" to such *jura regalia* as are associated with "lands, mines (or) minerals." This is not the ordinary case of generic words following particular and specific words. "Royalties" is neither more nor less a generic word than "lands, mines, (or) minerals." The fact is that the term "royalties" denotes a class of subjects differing entirely from "lands, mines (and) minerals." No common genus embraces them.

(2) 14 App. Cas. 295.

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Without belittling the rule of construction invoked on behalf of the respondent—*noscitur a sociis*—care must always be taken that its application does not defeat the true intention of the legislature; *Hawke* v. *Dunn* (1); and the cardinal rule that

> an Act of Parliament is to be construed according to the ordinary meaning of the words in the English language as applied to the subject matter, unless there is some other very strong ground derived from the context or reason why it should not be construed, *Hornsey Local Boars* v. *Monarch Investment Building Society* (2)

should not be disregarded.

I share, to some extent, the view expressed by Rigby L. J. in *Smelting Co. of Australia* v. *Commissioners of Inland Revenue* (3).

> The rule of construction which is called the *ejusdem generis* doctrine or sometimes the doctrine *"noscitur a sociis"* is one which, I think, ought to be applied with great caution because it implies a departure from the natural meaning of words in order to give them a meaning which may or may not have been the intention of the legislature.

Were we to accede to the argument of Mr. Newcombe we would, I fear, put on the ordinary meaning of "royalties" a restriction that Parliament did not intend. Indeed, Parliament has already limited that word by the qualification, "belonging to the several provinces * * * at the Union." Why should the court superadd another? It may be that from other provisions of the B.N.A. Act other limitations upon the signification of "royalties" should be deduced. For instance, the rights asserted by the Dominion to legislate concerning *bona confiscata,* deodands and royal fish, may be well founded; but, saving such possible exceptions, with profound respect, "neither in "the subject nor in the context" do I find adequate reason for giving to the word "royalties" in s. 109

(1) [1897] 1 Q.B. 579, at p. 586. (2) 24 Q.B.D. 1, 5.
(3) [1897] 1 Q.B. 175, at p. 182.

other than its primary and natural meaning. I think it includes the *jus regale* to *bona vacantia*. It would, indeed, present a curious incongruity if escheats should be included in, but *bona vacantia* excluded from, the royalties granted to the provinces.

I would therefore allow this appeal and direct that judgment be entered for the Attorney-General of British Columbia.

BRODEUR J.—I concur with Mr. Justice Duff.

MIGNAULT J.—The controversy here is whether the province of British Columbia or the Dominion of Canada is entitled to certain monies, to wit $7,135 brought into court by the defendant, Robert Paterson Rithet, who, as agent for the liquidator of the Colonial Trust Corporation, a company incorporated in England and which was dissolved in 1904, collected these monies in British Columbia as being due to the company. The liquidator died in 1911, and the Crown as represented by the Government of the United Kingdom makes no claim to this sum. Both parties before us concede that the monies in Mr. Rithet's hands are *bona vacantia* and it is on this basis that the court below dealt with them, and decided that they should be paid to the government of the Dominion. The Attorney-General of British Columbia now appeals and I will assume, as the parties both contend, that the monies collected by the defendant are really *bona vacantia*. The shareholders, if any remain, of the dissolved company have made no claim to these monies, and should they ever do so, nothing in the judgment to be rendered should stand in the way of justice being done to them.

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Mignault J.

The question to be decided turns on the construction of sections 102 and 109 of the "British North America Act, 1867," which are as follows:—

102. 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 on them by this Act, shall form one consolidated revenue fund, to be appropriated for the public service of Canada in the manner and subject to the charges in this Act provided.

109. 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.

British Columbia came into the Canadian Confederation in 1871 and these sections apply to it as if it were named therein. *Attorney-General of British Columbia* v. *Attorney-General of Canada. The Precious Metals Case* (1).

The point which arises in this case is not covered by any authority by which we are bound. In *Attorney-General of Ontario* v. *Mercer* (2), the question of the meaning of the word "royalties" in section 109 was considered by the Judicial Committee, but as their Lordships stated in the *Precious Metals Case* (1), at page 305, their decision did not go further than to hold that the word "royalties"

comprehends, at least, all revenues arising from the prerogative rights of the Crown in connection with "lands," "mines," and "minerals."

(1) 14 App. Cas. 295, at p. 304.

(2) 8 App. Cas. 767.

On behalf of the Dominion it is contended that this is all that the word "royalties" really comprehends; that to understand it in a general sense as synonymous with *jura regalia* would be to give to the provinces some species of property coming within the meaning of *jura regalia*, such as wrecks, confiscated property or deodands, which belong to the Dominion; and that since the word "royalties" as used in section 109 cannot be taken without some restrictions, a fair construction would be to limit these royalties to those connected with the enumerated species of property, lands, mines and minerals, applying the *ejusdem generis* rule.

The contention of British Columbia is that "royalties" in section 109 should receive its natural meaning as the English equivalent of *jura regalia*, and that as *bona vacantia* are among the *jura regalia* to which the King was entitled by virtue of his prerogative, the property in question belongs to the province and not to the Dominion. It is also suggested that at least the term "royalties" comprises any species of property as to which the province has powers of legislation, which would explain the exclusion of wrecks, deodands and property confiscated by virtue of the criminal law.

It was argued in the *Mercer Case* (1) that the term "royalties" had a special meaning restricting it to a royal right connected with mines and minerals, but their Lordships considered it 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 also said that they saw no reason why it should not have

(1) 8 App. Cas. 767

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its primary and appropriate meaning, as to (at all events) all the subjects with which it is here found associated—lands as well as mines and minerals, adding that the general subject of the whole section is of a high political nature, that it is the attribution of royal territorial rights, for purposes of revenue and government, to the provinces in which they are situate or arise.

If the object of section 109 is to attribute royal territorial rights for purposes of revenue and government to the provinces in which they are situate or arise, can it be applied to mere personal property such as this sum of money which the defendant collected in British Columbia as being due to the dissolved company? There does not appear to be any occasion here—since the monies collected are *bona vacantia* and therefore without an owner—to apply any rule such as *mobilia sequuntur personam*. The property is in British Columbia and has no other situation, real or notional. Moreover the whole question is whether *bona vacantia* of such a kind, under section 109 of the "British North America Act," come within the meaning of the word "royalties" as used in that section. If they do, they are within the exception made by section 109 to section 102 and belong to British Columbia; if not, under the general rule of section 102, they should go to the Dominion.

After full consideration, my opinion is that the word "royalties" in section 109, should be construed in its primary and natural sense as being the equivalent in English of *jura regalia*. Thus construed, it comprises *bona vacantia* (see *Dyke* v. *Walford* (1) approved by the Judicial Committee in the *Mercer Case* (2)). In

(1) 5 Moore P.C. 434. (2) 8 App. Cas. 767.

my judgment it is not restricted or controlled by the words "lands, mines and minerals" which precede. It is a fourth head added to lands, mines and minerals, and should comprehend all property which is properly described as "royalties," or at least such property as the property here in question. It may be that under Imperial statutes some species of *jura regalia* such as wrecks, do not go to the province, a point on which it is unnecessary to express an opinion here. It may also be that as an incident of the legislative authority of the Dominion Parliament over criminal law, property confiscated by virtue of the decision of a court of criminal jurisdiction should be attributed to the Dominion, a point also which does not call for a decision in this case. All that I intend to hold is that *bona vacantia* of the kind here in question belong to the province under section 109.

I have not failed to notice the ingenious argument of Mr. Newcombe, founded on the difference of expression between sections 102 and 109, that while at the Union the province of British Columbia had the power of appropriation over "royalties" in the general sense, which would bring them under the general rule of section 102, it is not shown that this species of property "belonged" to British Columbia at the union, section 109 referring to "royalties" *belonging* to the province at the Union. But in my opinion the question here is of a right belonging to the province, and where the province has the right of appropriation over property it seems to me clear that the right to that property belongs to the province. I therefore think that this argument, while ingenious, is not conclusive against the right of British Columbia to claim the property in question.

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I would in consequence allow the appeal but without costs and decide that the monies in Mr. Rithet's hands should be paid to the province of British Columbia. I agree with the first court that Mr. Rithet is entitled to his costs.

Appeal allowed with costs.

Solicitor for the appellant: *J. A. Ritchie.*

Solicitor for the respondent: *C. P. Plaxton.*