

Complete Reply to Reeve of Bucke by Minister of Mines

Hon. Chas. McCrea Explains Provisions of New Act to Amend the Assessment Act. Regarding Mining Lands. Hon. Chas. McCrea Has No Relationship or Connection in Any Way with MacCrae Mining Co.

The following spirited letter from Hon. Chas. McCrea, Minister of Mines for Ontario, fully explains itself and gives effective reply to the criticism levelled at the Minister by a recent letter from the Reeve of Bucke township:—

Toronto, Ont.,
March 6th, 1928

W. J. Post, Esq.,
Reeve, Township of Bucke,
North Cobalt, Ont.

Dear Sir:—I am in receipt of your favour of the 5th instant with reference to Bill No. 95 entitled "An Act to Amend the Assessment Act," a copy of which is herewith enclosed. It is apparent that you did not have the Bill before you when you wrote, as it does not in any way affect the decision given in favour of the Township of Bucke in the case of Bucke Township and the MacCrae Mining Company. The rights awarded the Township of Bucke in the Court's decision are expressly exempted in the Bill.

You state in your letter:—"We would suggest that it is not the duty of the Legislature to railroad laws

through to shield their friends from ordinary municipal taxes because of their leisure and ability to secure snap judgment from the House to protect them in their pet schemes."

It am at a loss to know just what you mean by this paragraph. Evidently you are striking at something or somebody, intending to create an impression of wrong-doing, but lacking the frankness to state clearly the situation you have in mind.

The Bill to which you take objection has been introduced and explained to the House, and stands for third reading. The reasons for the Bill I shall take some pains to set out:—

1. The laws of Ontario long since laid down in the Assessment Act that the minerals in, on or under mineral lands are not assessable by a municipality. The right of such taxation belongs to the Province as distinct from the municipalities. Upon this foundation is based our Mining Tax Act.

2. The Province for many years has sold public lands, (a) conferring the whole title, surface and mineral, (b) granting the surface but retaining the

minerals, (c) granting the minerals reserved in previous grant.

3. It has been a practice also for many years for a land-owner who held both surface rights and mining rights to sell his land reserving the mineral rights. Thus a separate title may be had under The Land Titles Act, (a) to the surface rights, (b) to the mineral rights.

4. There has in Ontario been a variety of laws governing the granting of titles by the Crown. For instance, prior to 1891 lands of the Province were usually sold under The Public Lands Act, generally for agricultural purposes, and the patents covered the entire estate, save for the usual reservation as to pine timber. In 1891 the Government of the day, realising the possible importance of our mineral wealth and because of the increased interest being taken in mining, changed the law and thereafter from 1891 to 1908 there was in force another system for selling Crown Lands. It divided the lands into two classes: (a) those sold for agricultural purposes, (b) those sold for mining purposes.

5. In lands applied for as agricultural lands and patented during this period the patent usually reserved the minerals, and the statutes of the day provided for such reservation whether so expressed in the patent or not. In the sale of mining land a higher price was exacted than for agricultural land, and a purchaser acquired all of the title to the lands (excepting timber reservations covering both surface rights and mining rights. In other words, where he obtained a title

to lands as "mining lands" there was no reservation of the minerals, but where he obtained a title to the lands as agricultural lands there was such a reservation.

6. It is immediately apparent, that, of the areas granted as agricultural lands where the minerals were reserved, the Crown had still for sale its reserved interest in the minerals, and in innumerable cases the Crown granted mineral titles to bona-fide purchasers who regard their title as a good title.

On the other hand, a purchaser of mining lands who obtained a full title to land might wish to dispose of the mineral rights. Under the laws of the Province he might do so retaining the surface rights to himself, and the law provided, and provides still, for the registration of each separate title as a separate entity and ownership.

7. With the coming into force of Ontario's new Mining Act in 1906, a new method of dealing with mining lands was provided permitting them to be staked out where the Crown owned all the title, and also on areas where the Crown, having parted with the surface rights for agricultural purposes, still owned the mining rights.

8. In the days of the silver rush of Cobalt, Haileybury and vicinity, stakers took up mining rights owned by the Crown where the surface rights or an equitable claim thereto were outstanding in the names of private individuals either as locates or patentees, and in the Township of Bucke the records show numbers of titles so acquired.

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Among other lands were those which subsequently became a matter of litigation in the case of Bucke Township and the MacCrae Mining Company, decided by the Supreme Court of Canada. The judgment of that Court recites that on January 30th and February 1, 1907, one James A. MacCrae, of the City of Ottawa, and one James A. Mulligan, obtained two grants in fee simple from the Crown; the first of mines, minerals and mining rights, and the second of surface rights, that is, of lands without the mines and minerals.

The records of the Department show, that the title to the mines minerals and mining rights was granted under the new Mining Act of 1908, that MacCrae and Mulligan had obtained these mining rights by purchase from the stakers who had duly staked them out under the Act. The surface rights or the equitable right to them were outstanding in other parties.

After James A. MacCrae, of the city of Ottawa, and J. A. Mulligan obtained the mining rights, realising that under the law in order to carry on mining operations they must settle with the surface owners for such damages as might arise, they acquired the surface interests from the owners thereof and subsequently obtained a title from the Crown of the surface rights, and these titles issued for separate estates in the land and were registered in the Land Titles Office as such.

9. In the course of time, a company known as the MacCrae Mining Company was formed and the titles, separately registered, both as to surface and mining rights, were transferred to the Company. Municipal taxes in respect of this property were imposed by the Corporation of Bucke and these taxes for the years 1916, 1917, 1918 were not paid and remained unpaid for more than two years thereafter. The Township Corporation to be effected for these taxes and the purchaser was one John I. Ritchie.

The question here arises:—(a) What could the Corporation assess in respect of the lands? (b) What interest could they sell for failure to pay taxes?

The owners of the mining rights contended that the Corporation's right to assessment was in respect to the surface rights only, and that the tax sale was good only in respect to the surface rights. The MacCrae Mining Company asserted its right to the mining rights it owned separately, and alleged that the tax sale was void in respect to the same.

10. The Supreme Court of Ontario in a judgment written by Mr. Justice Mastron decided that the right of taxation in respect of the mines and minerals and the severed title owned by the MacCrae Mining Company belonged to the Province, that the Township of Bucke had not the right to assess or sell such mining rights, and gave judgment in favour of the MacCrae Mining Company. Further appeal was taken to the Supreme Court at Ottawa, and the judgment of that Court by Mr. Justice Mignault, reversed the finding of the Supreme Court of Ontario. The Mining Company having become the owner of the surface rights, and of the mining rights, the Court found that these rights, although transferred as separate titles and held by the Company as separate titles, coalesced in one owner and hence were liable to taxation even as to the mineral rights, and that the deed of the Township of Bucke to the purchaser had conveyed the minerals.

11. Upon the rendering of such decision the Provincial Government gave very thorough and earnest consideration to the decision of the Supreme Court of Canada, and its possible effect on titles in the Province of Ontario. It foresaw great difficulties and uncertainties if the law were not reasserted and clarified. It considered carefully whether the law as interpreted by the Supreme Court would apply (a) only in cases where a subsequent owner acquired in his, her or its name, both of the severed titles as to mineral and surface rights, or (b) applied also to mineral lands held under a separate title by a different

owner where the municipality assessing the lands generally purported to convey all the title at a tax sale.

In either case, one familiar with titles, registration, estates and property could readily foresee confusion and uncertainty as to title resulting from each sale.

To illustrate, John Smith owns the surface rights of an area of land in the Township of Bucke, Peter Jones, residing in Boston, Mass., or London, England, owns the mineral rights in such lands, severed and separate from surface rights and registered under a separate title. The question arises, has the municipality in an assessment of such lands by description or area (mineral assessment being exempted from their jurisdiction) the right in a sale of such lands for unpaid taxes to convey to the purchaser at a tax sale the mining rights in such lands owned by another party who might never have received notice, who knows the municipality has not the right to assess mines and minerals, and who may never have heard of the procedure. It should be noted also that he default in payment of taxes was by the surface owner and not by the owner of the mining rights.

The foregoing illustration differs from the facts in the case before the Supreme Court of Canada for in that case the owner of the severed surface rights and the severed mineral rights was the same Company, and it might be argued that the judgment only applied to such a case, but the decision makes the law very uncertain.

12. It is to re-state and clarify the law and to give that assurance as to stability of title which the Government from time to time has proclaimed, that the legislation proposed has been introduced and explained in the House. Other difficulties might be enumerated which would arise if the Government failed to re-state and clarify the law. Lawyers would be unable to determine the validity of a title or the effect of coalescing or merging the two separate estates, since one person might acquire, either at the same time or a different time, the separately registered titles of surface rights and mining rights. The effect, therefore, of the Bill introduced is as follows:—Where any estate in mines, minerals or mining rights has heretofore or may hereafter become severed from the estate in the surface rights of the same lands they shall after being so severed thereafter be and remain for all purposes of taxation and assessment separate estates, notwithstanding the fact that one owner may become the owner of both titles. The Bill expressly exempts the lands involved in the case of the MacCrae Mining Company and the Township of Bucke. That decision stands with reference to those lands.

13. With the passing of the legislation referred to, municipalities will be confined as they have been previously, to the right of assessment in respect to the surface right where the titles are severed. Where the titles are not severed as to surface rights and mining rights the sale of lands, complying with the requirements of the law, will convey the whole interest in the land.

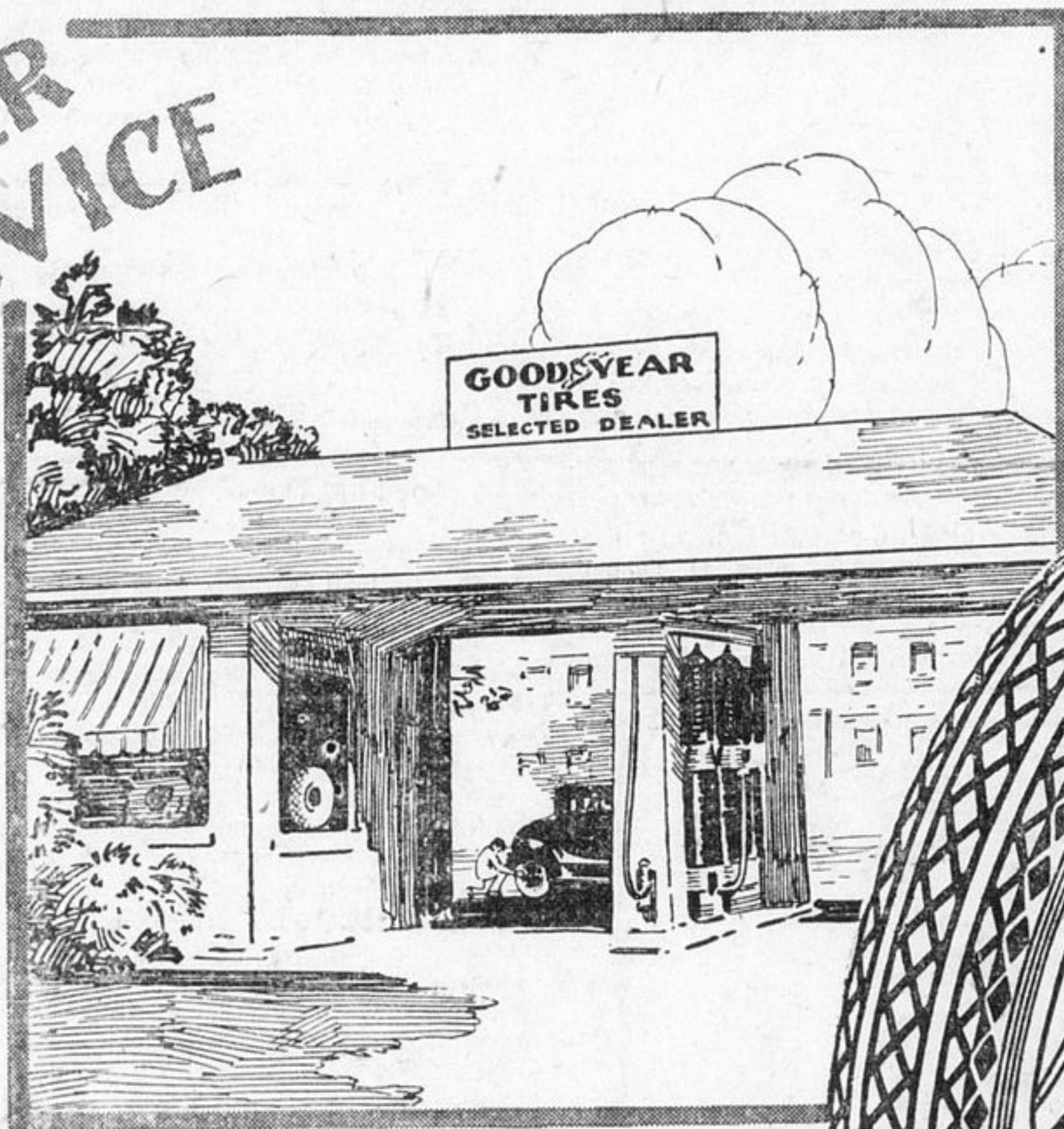
Since the publication of your letter some might infer a connection on my part with MacCrae Mining Company. You are thoroughly aware that neither Jas. A. MacCrae, of Ottawa, nor the MacCrae Mining Company is remotely, directly or indirectly related to or associated in any way with myself.

As the letter which you sent to me indicates that for purposes of publicity you have forwarded a copy to Mr. W. E. N. Sinclair, Leader of the Liberal Opposition, Mr. Lethbridge, Leader of the Progressives, the Toronto Star, Toronto Globe, Toronto Mail & Empire, Ottawa Journal, I am forwarding copy of my reply to you, to the same parties, also to the Northern Miner, Cobalt, the Nugget, North Bay, the Star, Sudbury, Porcupine Advance, Timmins, The Soo Star, and the News-Chronicle, Port Arthur, so that both sides of the question may be presented.

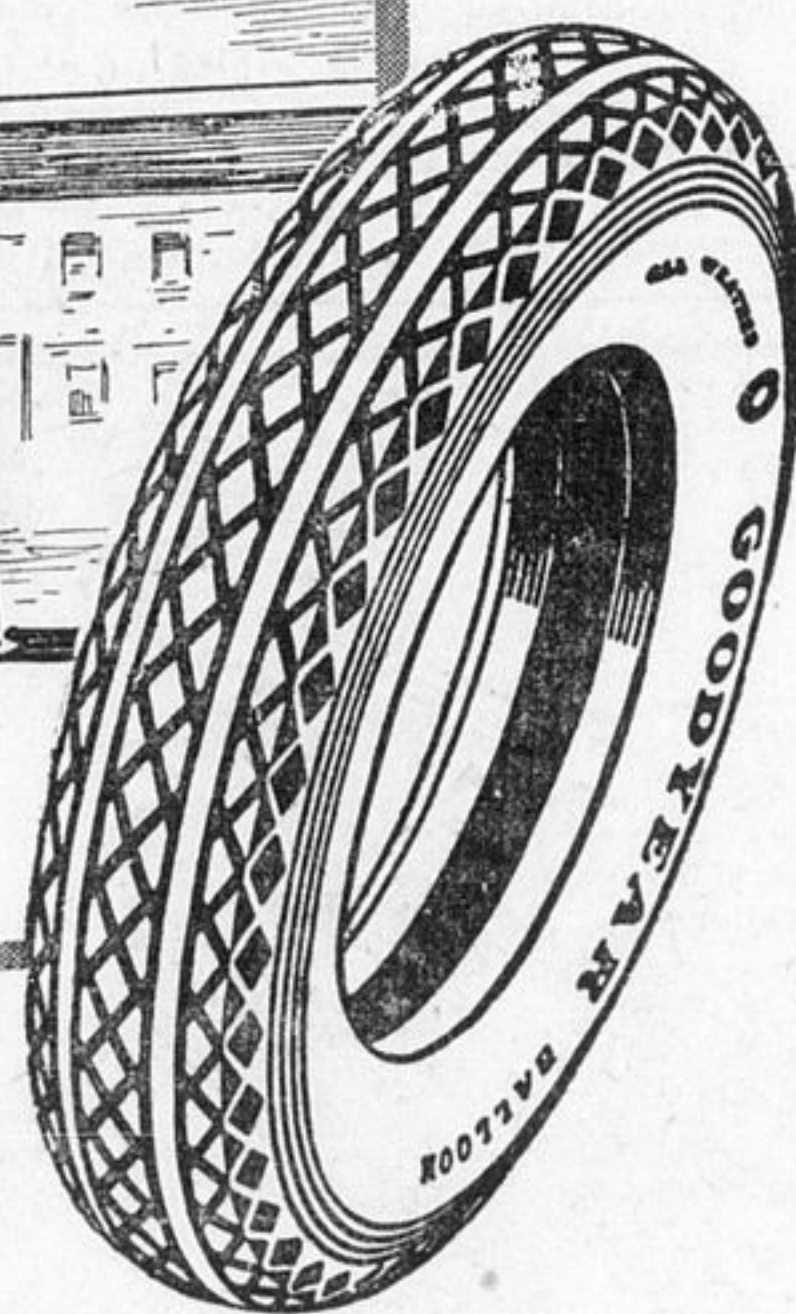
Yours very truly,
CHAS. MCCREA,
Minister of Mines.

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