

Judgement Announced Mines Assessment Cases

Full Text of Judgment in Case of Appeals of Teck Township Mines, Should Be of Special Interest to Timmins and Tisdale, Where Mines Have Also Appealed

During the past few years, the three big gold mining communities of Ontario's North, Timmins, Township of Tisdale and Township of Teck, have been trying to get what they claim is "a fair share of the taxes levied on mines."

Conferences have been held time and again, and this spring when representatives of the three councils gathered here, it was decided that all three would levy greater income tax on the mines. They held that under the Mining Tax and Assessment Acts they were entitled to greater revenue.

The crux of the matter is this, briefly: A section of the Act states that the municipality is entitled to levy one and one-half per cent. on the excess profits of a mine, up to a total excess profit of \$2,333,333.33. On anything above this another one per cent. was to be levied. The question was whether this latter sum meant just one per cent. or two and one-half per cent. The amount of revenue thus made available to the municipalities would be considerable. In the case of Hollinger, it amounted to nearly \$50,000. Figures for the Kirkland Lake mines are shown in the below judgment as delivered by Judge Hayward, following the appeal of the mines.

The town of Timmins' case has not yet been called, but in view of the present judgment, it is freely admitted that the chances of getting the additional taxes do not look at all bright. The Township of Tisdale's case has not yet progressed to the appeal stage.

Following is Judge Hayward's ruling, in detail:

"These are three income assessment appeals which came before me at Kirkland Lake, Township of Teck, A. G. Slaght, K.C., representing the appellants and L. A. Lillico Esq., barrister, the respondent.

"The appeal in each case is from the amount of income assessment levied against each said mining company by the Municipality of the Township of Teck for the year 1935, the amount of

to the assessment of income from the mines. Sub sections 1 and 2 of section 120 (a) would seem to make this fairly clear. Sub section 1 provides for "the levying upon the taxable income according to the said roll (the special income tax roll) the rate in sub section 2 set forth." Sub section 2 provides that this rate "shall be the same as the rate levied in the current year upon real property." The rate levied against real property in the township for the year 1935 was 56.56 mills. It would seem obvious, therefore, that in the face of the restrictions placed upon municipalities in the assessment of income from mines by sub-section 9 of section 40 of The Assessment Act, that the rate of 56.56 mills could not be levied against the income of these mining companies. However, as I am disposing of the appeals on other grounds, it is needless to discuss it further.

Discusses Objections

"Several objections to the validity of By-law No. 702 passed by the council establishing the special income tax roll, were raised by Mr. Slaght, but on Mr. Lillico taking the objection, which I sustained, that the question of the validity of this by-law could not properly come before this court on these appeals, were not pressed by him. Counsel for the appellants contended that the amount of income tax a mine was liable for was definitely determined and fixed by sub section 9 of section 40 of the Assessment Act and could not be increased by the municipality as had been attempted in the case of each of the said mines this year. That the amount of such income assessment as fixed by the Act was 1 1/2 per centum of the annual profits of the mine up to an amount which yielded \$35,000 to the municipality and in case the annual profits of the mine exceeded an amount which at 1 1/2 per centum yielded \$35,000, then a further 1 per centum of such excess profits was payable. That the municipality this year for the first time since the amendment to the Assessment Act was passed in 1927, had charged 2 1/2 per centum of the amount of the excess profits of each of the said mines and thus the Act did not permit it to do. Mr. Lillico for the municipality argued that there was no appeal given by the Act from a rating by-law and as a by-law striking the rate of assessment for the year 1935 had been passed by the Council of the Township, no appeal was open to these appellants against such rating. That the proper interpretation to be given to the wording of

"The extent to which and the limit upon a municipality in taxing the income of such a mine, is prescribed by sub section 9 of said section 40 which reads as follows: (9) 'Notwithstanding anything in this section contained, the income tax payable to any municipality upon a mine or mining work liable to taxation under section 4 of the Mining Tax Act, shall not exceed one and one-half per centum of the annual profits of the mine or mining work upon which the tax payable under said section 4 is based unless the amount of such annual profits exceeds a sum which will yield \$35,000 in respect of such income tax when an additional one per centum of such excess annual profits shall be payable to the municipality.'

"The right of a municipality to assess for income, a mine situate within the municipality, is given by sub section 6 of section 40 of the Assessment Act R.S.O. (1927) Cap. 238.

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sub section 9 of section 40 of the Assessment Act permitted the municipality to charge 2 1/2 per centum of the profits of each mine in excess of \$2,333,333.33 as had been done this year.

Questions at Issue

"Two questions arise for determination: 1st. Have the mines a right of appeal and, 2nd. What is the proper meaning of sub section 9 of section 40 of the Assessment Act as regards the right of the municipality to assess these mines for income.

"As to the first, the right of appeal is clearly indicated in sub section 8 of section 40 of 24 George V, Cap. 1 and being 'The Assessment Amendment Act' which reads as follows: (8) A person whose name is entered in the special roll of taxable income, shall not be entitled to notice of such entry but upon receipt from the collector of demand for payment of the said rate upon the amount for which he is taxable according to the said roll, shall have in respect thereto the right of appeal provided in this Act in the case of assessments etc.

"These appeals are not against a rating by-law but against the rate upon the amount for which each mine is taxable according to said roll and an appeal lies.

"As to the proper meaning to be given to the wording of sub section 9 of section 40 of the Assessment Act, this has given me serious consideration in view not only of the large amounts involved but of the fact that under sub section 8 of section 8 of the Assessment Amendment Act, there is no appeal from my decision.

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333,333.33) in which event, the municipality may make a further charge of one per centum of the profits above said amount. In my opinion if it had been the intention that a municipality should have the right to charge 2 1/2 per centum of the excess annual profits of a mine, as the municipality this year seeks to do, sub section 9 of section 40 would have clearly so expressed. If the municipality may charge this 2 1/2 per centum of such annual profits, then a mine would be paying considerably more as an income tax than it could in turn deduct from the amount payable by it under section 4 of the Mining Tax Act and that in my opinion is not the intention of said sub section 9 nor the proper interpretation to be given to the wording of it.

"The appeal in each case will have to be allowed."

Shareholders Approve Sale Of the Porcupine Gold Reef

In a recent issue of The Advance reference was made to the calling of a meeting of the shareholders of Porcupine Gold Reef Mining Co. to dispose of the company's property and arrange for the surrender of the charter, a new company being formed with the purpose of developing the property. In its issue last week The Northern Miner made the following reference to the meeting of the shareholders of Porcupine Gold Reef:—

"Shareholders of Porcupine Gold Reef Mining Co. Ltd., at a special general meeting last Thursday gave approval to a proposal to dispose of the company's property. The purchaser, Thomas Marston, is to pay \$2,000 in cash and 450,000 shares in a new 3,000,000-share company to be formed. This consideration is said to be sufficient to pay off Porcupine Gold Reef's indebtedness and to permit a share exchange on the basis of three new for each 20 old shares outstanding.

"On receipt of the new shares the charter of Porcupine Gold Reef Mining Co. is to be surrendered, it was stated. While the new shares cannot be distributed until released by the Ontario Securities Commissioner it will be possible to issue some form of interim certificate.

"Mr. Marston told the meeting that he intended to proceed at once with the organization of the new company and that it was proposed to spend approximately \$10,000 on development before a public offering of the stock was made. The necessary funds for this work were available, he said. A group of adjoining claims was to be taken over by the new company and negotiations were proceeding for a third group. Replying to a question, Mr. Marston stated that not more than 1,200,000 shares would be issued for all properties, which would leave a minimum of 1,800,000 treasury shares.

"The Porcupine Gold Reef found adjoins the Hughes Porcupine on the north and is a short distance west of the Pamour property.

Say Former Thornloe Man Deceived Pension Board

W. H. Phillips, formerly of Thornloe, who now is waiting trial on a charge of arson, has still other charges to face in connection with alleged fraud in securing old age pension for himself. Phillips, who is 71 years of age, was arrested early in August following a fire marshal's investigation of the burning of a store said to be owned by Phillips at Thornloe. In the course of the enquiry it is alleged that it was disclosed that a week before applying for the old age pension last year, Phillips withdrew \$1,051 from his bank account in New Liskeard. It is claimed that he made no mention of these assets nor of his ownership of the store when he made his application for an old age pension. The pension was granted by the pension authorities on the statements made by him and apparently confirmed by others. As a result of the fire and the securing of the old age pension, Phillips now faces charges of arson, perjury and false pretences.

Word from Toronto is to the effect that wholesale examination of old age pension cases has been commenced by the Ontario Dept. of Public Welfare with a view to eliminating fraud whenever it is discovered. The announcement was made by Hon. Dr. Croll in mentioning the prosecution of Phillips

on the charge in connection with the old age pension. The new plans of handling old age pensions in this province have not stopped frauds or alleged frauds, the Phillips case being one under the new arrangement. From knowledge of old age pension applications in the North, however, The Advance is inclined to believe there are comparatively few fraudulent cases, at least up this way. It seems almost impossible to prevent the occasional case if applicants are ready to perjure themselves but knowledge of the cases leads to the belief that only a small proportion of the old people try to take any advantage of the law. Indeed, in some of the cases where apparent fraud seems evident, it sometimes happens that misunderstanding is the cause of the trouble. Old people do not always understand and due allowance should be made for this.

Sudbury Star:—After all, it should be possible to be as thankful on a Thursday as on a Monday.

Peterborough Examiner:—A special place of honour in the Canadian Hall of Fame should be reserved for the good citizen of Leaside who surprised the council of that Toronto suburb the other day by sending a cheque for \$151.59, to cover the amount of relief received by himself and his family.

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