1924

*Oct. 28, 29.
*Nov. 19.

IN RE ESTATE ENOS STONE

THE ATTORNEY GENERAL OF CANADA ..... APPELLANT.

AND

WILLIAM STONE .....

AND

THE ATTORNEY GENERAL OF SASKATCHEWAN ..... RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL OF SASKATCHEWAN

Constitutional law—Devolution of estates—Illegitimate child dying intestate, unmarried and predeceased by mother—Right of other illegitimate child to inherit—The Devolution of Estates Act (Sask. (1907) c. 16)—Ultra vires.

One Sarah Stone who died in 1890 left surviving two illegitimate sons and a number of legitimate children. One of the illegitimate sons, Enos Stone, died in 1918 intestate, unmarried and domiciled in Saskatchewan.

Held that, under the provisions of sections 24 and 25 of The Devolution of Estates Act, Sask. (1907) c. 16, the whole of the property of the deceased, both real and personal, passed to the other illegitimate son.

Sections 24 and 25 of The Devolution of Estates Act enact that illegitimate children shall inherit from the mother as if they were legitimate and through the mother if dead any real or personal property which she would if living have taken by purchase, gift, demise or descent from any other person and that if an intestate, being an illegitimate child, dies leaving no widow or husband or issue the whole of such intestate's property, real and personal, shall go to his or her mother.

Held that these sections, amending the law of descent or inheritance, are *intra vires* of the legislature of Saskatchewan.

Judgment of the Court of Appeal (13 Sask. L.R. 159) affirmed.

APPEAL from a decision of the Court of Appeal for Saskatchewan (1), reversing the judgment of the trial judge on an application by the administrator of the estate of Enos Stone deceased for the opinion, advice and direction of the court as to claims to the deceased's property.

Enos Stone, an illegitimate son of one Sarah Newton, died on or about the thirteenth January, 1918, intestate and unmarried. At the time of his death he was domiciled in Saskatchewan. His estate consisted of real and personal

*PRESENT:—Anglin C.J.C. and Idington, Duff, Mignault and Rinfret JJ.

(1) [1920] 13 Sask. L.R. 159; [1920] 1 W.W.R. 563.

property situated in the province of Saskatchewan. The land comprised in the estate was on the first day of September, 1905, the date of the coming into force of the Saskatchewan Act (4-5 Edward VII (Dom.) c. 42)—Crown land within the province, vested in the Crown and administered by the Government of Canada for the purposes of Canada, and was patented to Stone at a later date. On the 23rd September, 1918, letters of administration to his estate were granted to the Western Trust Company as official administrator for the Judicial District of Swift Current. Sarah Newton, the mother of the intestate, was also the mother of another illegitimate son called William Stone, who is living and resides at Madelia, in the state of Minnesota. After the birth of the two illegitimate sons, Sarah Newton was married to one Walter E. Stone who predeceased her, and bore ten children to him. Eight of these children are still alive. Two of the children are dead, but have left issue surviving them. Sarah (Newton) Stone died on the 16th October, 1890. Claims were made to the estate by William Stone and the legitimate children and grandchildren of Sarah Stone, as well as on behalf of the Attorney General for Canada and the Attorney General for Saskatchewan. An application was made under the rules in that behalf by the administrator for the opinion, advice and direction of the Court of King's Bench on the following questions: (1) What persons, if any, are entitled to share the estate of the said deceased. (2) In the event of none of the said persons being entitled to share the estate of the said deceased, whether the property of the said estate will escheat to the Crown, in the right of the Dominion of Canada, or in the right of the province of Saskatchewan. The matter was heard by Bigelow J., in chambers, who held against the claims of William Stone and the legitimate children of Sarah Stone. The learned judge also held that the lands of the intestate escheated to the Crown in the right of the Dominion. As to the personal property, it was held to be *bona vacantia* and to belong to the Crown in the right of the province, after the payment of all claims of creditors, solicitors' costs and administration fees. The Court of Appeal set aside *in toto* the judgment of Bigelow J. and declared that all the property of Enos Stone had

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gone to William Stone, the other illegitimate son of Sarah Newton Stone.

Lafleur K.C. and *Plaxton* for the Attorney General of Canada. The whole estate, personal as well as real, of the deceased Enos Stone, upon his death intestate without heirs or next of kin, *ipso facto* passed to and became vested in the Crown in the right of the Dominion of Canada as *escheat* and *bona vacantia.*

As between the Dominion of Canada and the province of Saskatchewan, sections 102 and 109 of the B.N.A. Act (1867) have no application to the decision of the question at issue; and, on the true construction of the provisions of "The Saskatchewan Act" ((C.) 1905, c. 42) the royal revenues arising from *escheat* and *bona vacantia* within that province belong to the Crown in right of the Dominion.

The provisions of "The Saskatchewan Act" do not give the province power to enact the sections 23, 24 and 25 of the Devolution of Estates Act (R.S.S. 1909, c. 43). Upon their proper construction, these sections do not operate to carry the real and personal property of the deceased to William Stone or to the legitimate children of Sarah Stone, and the said property have consequently escheated to the Crown in the right of the Dominion.

Blackwood and *Haywood* for the Attorney General of Saskatchewan. Sections 23 and 24 of The Devolution of Estates Act are *intra vires* the provincial legislature. In the alternative, if these sections are held to be *ultra vires,* the personal property of the deceased should be declared to have passed on his death to the Crown in right of the province.

Crysler K.C. for the respondent W. Stone. Under the provisions of The Devolution of Estates Act, which the legislature of Saskatchewan was competent to enact, William Stone was entitled to the whole estate of the deceased, real and personal.

The judgment of the majority of the court (Anglin C.J.C. and Duff, Mignault and Rinfret JJ.) was delivered by

MIGNAULT J.—This litigation arises out of an originating summons issued at the instance of the Western Trust Company, administrator of the estate of the late Enos Stone, in his lifetime of Cabri, in the province of Saskatchewan, and to which were made parties the Attorney General of the Dominion, the Attorney General of Saskatchewan, William Stone, stated to be the illegitimate son of Sarah Newton, and the children issue of the marriage of the said Sarah Newton and Walter E. Stone. The latter children will be hereafter referred to as the legitimate children of the said Sarah Newton Stone.

Sarah Newton is said to have had two illegitimate children before her marriage with Walter E. Stone, to wit, the deceased Enos Stone, who died unmarried and intestate, and William Stone (neither of whom apparently were children of Stone, although they assumed his name), but the appellant objects that the filiation of William Stone has not been legally proved. Sarah Newton Stone had of her marriage with Walter E. Stone ten children, all now living except two who are represented by their children. She died in 1890, many years before Enos Stone. The estate of the latter is valued at $19,757.33, consisting of real and personal property, his lands having been patented to him by the Crown in the right of the Dominion subsequently to the passing of The Saskatchewan Act, c. 42 of the statutes of Canada, 1905.

Two questions were submitted for the opinion of the court:

1. What persons, if any, are entitled to share the estate of the said deceased?
2. In the event of none of the said persons being entitled to share the estate of the said deceased, whether the property of the said estate will escheat to the Crown in the right of the Dominion of Canada, or in the right of the province of Saskatchewan?

The trial judge, Bigelow J., decided that none of the children, legitimate or illegitimate, of Sarah Newton Stone were entitled to share the estate of Enos Stone; that the land of which he died possessed had escheated to the Crown in the right of the Dominion of Canada and his personal estate as *bona vacantia* had gone to the Crown in the right of the province of Saskatchewan.

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The Attorney General of Canada appealed to the Court of Appeal of Saskatchewan from that part of the judgment of Bigelow J. which declared that the personal estate of Enos Stone as *bona vacantia* had gone to the province of Saskatchewan. On this appeal, although the children, legitimate and illegitimate, of Sarah Newton Stone had not themselves appealed, the Court of Appeal intimated that it would consider whether they had any right to the deceased's estate, and no objection appears to have been taken to this course. The judgment set aside *in toto* the judgment of Bigelow J., and declared that all the property of Enos Stone had gone to William Stone, the illegitimate son of Sarah Newton Stone. From this judgment the Attorney General of Canada appealed to this court, and at the hearing the two attorneys general, and William Stone were represented by counsel. The legitimate children of Sarah Newton Stone were not represented by counsel before us, although notice of the appeal was given them.

If William Stone—who, it will be convenient to assume, was the illegitimate son of Sarah Newton Stone, subject to considering later the objection of the appellant that his filiation has not been legally proved—is entitled to the estate of Enos Stone, there can be no question of escheat or of devolution of *bona vacantia* either in favour of the Crown in the right of the Dominion or of the Crown in the right of the province. If he is not entitled to the estate, it is conceded that the lands of Enos Stone, patented to him from the Dominion after the creation of the province of Saskatchewan, escheated to the Crown in the right of the Dominion, and the issue between the Attorney General of the Dominion and the Attorney General of the province is as to which government is entitled to his personal estate. Counsel for the province of Saskatchewan also conceded that if the Dominion takes the lands of Enos Stone by escheat it takes them subject only to such charges as affect them and not to the general debts of Enos Stone.

In declaring William Stone entitled to the estate of Enos Stone, the Court of Appeal based its decision on sections 24 and 25 of The Devolution of Estates Act, c. 16 of the statutes of Saskatchewan, 1907. These sections (carried into the revision of the statutes of the province in 1909, as

ss. 23 and 24 of c. 43, and into the revision of 1920 as ss. 45 and 46 of c. 73), read as follows:—

24. Illegitimate children shall inherit from the mother as if they were legitimate, and through the mother, if dead, any real or personal property which she would, if living, have taken by purchase, gift, demise or descent from any other person.

25. If an intestate being an illegitimate child dies leaving no widow or husband or issue the whole of such intestate's property, real and personal, shall go to his or her mother.

The contentions of the Attorney General of Canada—and much assistance has been derived from the very able and learned factum filed on his behalf—may be briefly stated in the following propositions.

1. Sections 24 and 25 of the Saskatchewan statute, in so far as they purport to add to the persons who at common law are entitled to claim the estate of an intestate in the province, and thus to defeat the right of escheat of the Crown in the right of the Dominion, are *ultra vires* of the province.

2. Properly construed, these sections do not support the claim of William Stone, assuming him to be the illegitimate son of Sarah Newton Stone, to the estate of Enos Stone.

3. The Crown in the right of the Dominion is entitled to take by escheat the lands of Enos Stone and as *bona vacantia* his personal property, and it takes the latter free from the obligation to pay the general debts of the intestate.

First proposition. Very important constitutional problems are involved in the decision of this question.

Under the authority granted it by The British North America Act, 1867, the Parliament of Canada, in 1905, created the new provinces of Alberta and Saskatchewan out of what was known as the North West Territories, which territories were subject to its legislative jurisdiction. The Saskatchewan Act, with which we are concerned here, is c. 42 of the statutes of Canada, 1905.

Very briefly, the effect of this statute is to create a province with the rights and powers of the other provinces of the Dominion. Some important provisions should however be specially noted.

Thus it is provided by section 3 as follows:

3. The provisions of the British North America Acts, 1867 to 1886, shall apply to the province of Saskatchewan in the same way and to the like extent, as they apply to the provinces heretofore comprised in the

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Dominion, as if the said province of Saskatchewan had been one of the provinces originally united, except in so far as varied by this Act. and except such provisions as are in terms made or by reasonable intendment may be held to be specially applicable to or only to affect one or more and not the whole of the said provinces.

And by section 21 it is enacted:—

21. All Crown lands, mines and minerals and royalties incident thereto and the interest of the Crown in the waters within the province under The North-West Irrigation Act, 1898, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada subject to the provisions of any Act of the Parliament of Canada, with respect to road allowances and roads or trails in force immediately before the coming into force of this Act, which shall apply to the said province with the substitution therein of the said province for the Northwest Territories.

At this late date it would be idle to deny that within the limits of their jurisdiction the provinces of the Dominion possess powers as ample as the Imperial Parliament in the plentitude of its own power possessed and could confer. *Hodge* v. *The Queen* (1); *Liquidators of the Maritime Bank of Canada* v. *The Receiver General of New Brunswick* (2).

Legislation as to rights of succession and devolution of estates on intestacy undoubtedly comes within the 13th heading "property and civil rights in the province" of s. 92 of The British North America Act. And *Attorney General of Quebec* v. *Attorney General of Canada* (3), decided by the Quebec Court of Queen's Bench, is authority for the proposition that the power to extend the degrees of succession so as to comprise illegitimate children is not curtailed by any rights of escheat belonging to the Crown. If therefore s. 92, s.s. 13, of The British North America Act fully applies to Saskatchewan, it seems clear that provincial legislation of the kind in question could not be attacked because in a particular case it may defeat the right of escheat of the Crown, assuming such right to belong to the Crown in the right of the Dominion.

But the appellant relies on s. 21 of The Saskatchewan Act, as restricting the right of Saskatchewan so to extend the degrees of succession as to deprive it of the benefit of an escheat which under the common law and irrespective of this legislation it could have claimed.

(1) [1883] 9 App. Cas. 117. (2) [1892] A.C. 437.
(3) [1876] 2 Q.L.R. 236.

Section 21, no doubt the result of a bargain made with the new province, reserves to the Crown in the right of the Dominion

all Crown lands, mines and minerals *and royalties incident thereto.*

The reservation of royalties, *jura regalia,* is merely of those incident to Crown lands, mines and minerals, and while the province cannot by statute appropriate the right of escheat of the Dominion in respect of Crown lands, mines and minerals in Saskatchewan and Alberta, and it has not done so here, it does not follow that it cannot change its laws of inheritance. The contention of the appellant that ss. 24 and 25 are *ultra vires* should therefore be rejected.

Second proposition. The question here is as to the proper construction of ss. 24 and 25 of the Saskatchewan Devolution of Estates Act.

It will be useful to give in very few words the history of this legislation.

At common law a bastard is *nullius filius* and cannot therefore inherit from ascendants or collaterals, nor can ascendants or collaterals inherit from him. His only heirs are those of his body.

The laws of England relating to civil and criminal matters, as they existed on the 15th of July, 1870, were introduced into the North West Territories (49 Vict. (D.) c. 25, s. 3). Thus the common law as above stated and also the Inheritance Act of 1833 (3-4 William IV, c. 106) became a part of the law of these territories, subject of course to change by competent legislation.

In 1886, by The Territories Real Property Act, c. 26 of the statutes of Canada, 1886, the right of inheritance of and from illegitimate children was first recognized and provisions (ss. 16 and 17) substantially the same as the sections under consideration were enacted by the Parliament of Canada. These provisions, as ss. 14 and 15, were carried into the Dominion Land Titles Act, 1894, c. 28 of the statutes of that year.

The latter statute continued in force after the creation of the new provinces and was repealed as to these provinces on the coming in force of the provincial Land Titles Act. This provincial Act reproduced the provisions to which reference has been made, and they were finally inserted in The

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Devolution of Estates Act of 1907. In passing from one statute to another they have been somewhat broadened out.

Coming now to the construction of ss. 24 and 25 of the Saskatchewan statute, s. 25 can give rise to no difficulty. It means what it says, and under it the whole of the property, real and personal, of an intestate, being an illegitimate child who has left no widow or husband or issue, goes to his or her mother. It will be necessary to determine whether this devolution of the intestate's estate can properly be termed a descent in the sense in which that word is used in s. 24, but for the moment the question is merely as to the meaning of these sections, and the only one that can give us any difficulty is s. 24.

That the language of s. 24, while seemingly clear is in reality somewhat equivocal, is shewn by the different constructions which the two courts below have placed on it. The first member of the phrase stating that

> illegitimate children shall inherit from the mother (their mother) as if they were legitimate,

is sufficiently plain. As far as inheritance from the mother of property belonging to her at her death is concerned, the illegitimate child is placed on the same footing as a legitimate one, and both Mr. Lafleur, representing the appellant, and Mr. Chrysler, who appeared for the respondent William Stone, agreed that the illegitimate child would inherit with the legitimate children property belonging to the mother at her death intestate.

The remainder of s. 24 goes much further and gives to the illegitimate child a right of inheritance through his or her mother which, as expressed, seems greater in extent than that enjoyed by her children born in lawful wedlock. For the illegitimate child inherits

> through the mother, if dead, any real or personal property which she would, if living, have taken by purchase, gift, demise or descent from any other person.

The words " through the mother " are probably used here to indicate the course of descent, although the possibility that the legislature considered this as a case of representation cannot be excluded with any certainty. By a fiction of law, the mother, although dead, is supposed to have been living and to have acquired some property by purchase, gift, demise or descent, and this property the illegitimate

child inherits " through the mother." No such right of inheritance was granted by the Alberta statute to the legitimate child, and in the case of Enos Stone, if there had not been another illegitimate child, no one would have been entitled to claim that he had inherited the estate. Perhaps unwittingly but none the less effectively the legislature has put a premium on illegitimacy.

The appellant, however, contends that the generality of s. 24 is cut down by the use of the terms

> purchase, gift, demise or descent

which he submits should be construed in their strict technical sense. He argues that the only possible title here is one by descent and that descent necessarily supposes that the person taking by this title is the heir of and related by consanguinity to the person from whom he takes.

Descent is defined as taking real estate by inheritance, that is, as heir of the former holder (Halsbury, vo. Descent and Distribution, No 1). The Inheritance Act, 1833, states that it is

> the title to inherit land by reason of consanguinity as well where the heir shall be an ancestor or collateral relation as where he shall be a child or other issue.

As used in olden times it was an apt expression, for it was a maxim of the law that on the death of the tenant in fee the land should *descend* and not *ascend* (Bouvier, Law Dictionary, vo. *Descent and Distribution*), but now a title of inheritance ascends as well as descends, although it is still called a descent. In a legal system like that of Saskatchewan, where the real and personal property of a decedent is vested in his personal representative and where both devolve according to the same rules (R.S.S. c. 73, s. 3), it matters little that in the technical language of the law " descent " is used in respect of real estate and " distribution " for the division of the personal estate of an intestate (Bouvier, *loco citato supra*).

" Purchase " and " descent " are very wide and mutually exclusive terms, and as a purchase includes any title other than one by descent, it could comprise a title, if it be not a title by descent conferred by a statute such as the one in question. But in view of the enactment contained in s. 25, it can be said that in Saskatchewan the mother is the heir-at-law of her illegitimate child who dies intestate and

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leaves neither husband or wife, nor issue surviving, and in that respect a modification of the common law is made by the statute to which full effect must be given. So the title conferred by s. 25 can well be considered a title by descent. If therefore the mother takes by descent under s. 25 it would be consistent with the rules of legal interpretation to conclude that the term "descent" in s. 24 comprises a title by descent such as the mother acquires by virtue of s. 25. The conclusion consequently seems inevitable that Sarah Newton Stone, if living, would have inherited the property left by Enos Stone by descent and as a result her illegitimate son William Stone takes this property through her under s. 24.

It is a matter of regret that the legitimate children of Sarah Newton Stone cannot take a share in this property, but while s. 24 remains unamended nothing can go to them, for they are not at common law the heirs of Enos Stone.

Due consideration has been given to the memorandum of additional authorities filed by the appellant some time after the argument. The only case among those cited which appears to call for any comment is the decision of the Supreme Court of Indiana in *Jackson* v. *Hocke* (1). It may be observed however that while s. 2998 of the Indiana statute is somewhat similar to, although not identical with, s. 24 of the Saskatchewan Devolution of Estates Act, there is no provision in the Indiana statute to the same effect as s. 25 of the Saskatchewan Act. The inheritance of the mother under the latter section is certainly an inheritance by descent, and if so it is difficult to appreciate why it should not be considered as an inheritance by descent within the meaning of s. 24.

In view of what has been said, the third proposition of the appellant need not be considered, for there is no escheat and there are no *bona vacantia.*

At this late stage of the proceedings, it does not seem proper to order a reference to determine whether William Stone is really the illegitimate son of Sarah Newton Stone. He was treated as such by the two courts below, and this question should have been tried out before the trial court.

(1) [1908] 171 Indiana R. 371.

The appeal therefore fails and I would dismiss it with costs against the appellant in favour of the respondent William Stone. I would not order these costs to be paid out of the estate, for that virtually would oblige the respondent William Stone to pay them out of his property. I would grant no costs on this appeal to the Attorney General of Saskatchewan.

IDINGTON J.—Enos Stone late of Cabri in the province of Saskatchewan, farmer, was the illegitimate son of Sarah Newton of Lincolnshire, England (later Sarah Stone, wife of Walter E. Stone of the same place), and James Dykens of the same place and died intestate, unmarried, and possessed of real and personal estate.

Letters of administration of all and singular the property of the deceased were duly granted to the Western Trust Company of the city of Regina, in Saskatchewan, as the official administrator of the judicial district of Swift Current, on the 23rd of September, 1918.

There was born to the said Sarah Newton, prior to her marriage to the said Walter E. Stone, another illegitimate son called William Stone. After her marriage she gave birth to a number of legitimate children, some of whom died leaving legitimate issue.

The said Sarah Stone died the 6th October, 1890.

The said Enos Stone was domiciled in Saskatchewan at the time of his death. The lands comprised in his said estate were patented from the Crown subsequent to the passing of the Saskatchewan Act, being c. 42 of the statutes of Canada 4-5 Edw. VII.

An originating summons having been taken out by said administrator to determine who is entitled to the estate of said deceased, the parties were heard by Bigelow J. in Chambers, who held that the land escheated to the Crown in right of the Dominion, and that the goods belonging to the estate of the deceased escheated to the Crown in the right of the province of Saskatchewan, after payment of all claims of creditors, solicitors' costs and administrator's fees out of same.

Upon appeal therefrom by the Crown on behalf of the Dominion to the Court of Appeal for Saskatchewan, that court set aside said judgment and declared that all the pro-

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perty of the said deceased, Enos Stone, should go to William Stone, the illegitimate son of Sarah Stone, the mother of the said deceased; subject to payment of debts, succession duty, costs of administration and all other claims and expenses properly chargeable against the estate.

The learned Chief Justice of the Court of Appeal properly points out that though the English law as introduced in the North West Territories might have produced an escheat in favour of the appellant, yet there had been very important changes made by the Territories Real Property Act, c. 26 of the statutes of Canada, 1886 (later R.S.C. 1886, c. 61) in the law relating to inheritance by and from illegitimate children to which I am about to advert, as the continuation thereof is in truth the turning point of this appeal.

I also attach, however, great importance to the ss. 4 and 5 of said Act as consolidated.

S. 4 is as follows:—

> 4. From and after the commencement of this Act, all lands in the Territories shall be subject to the provisions hereof;

and s. 5 is as follows:—

> 5. All lands in the Territories which, by common law, are regarded as real estate, shall be held to be chattels real, and shall go to the executor or administrator of any person or persons dying seized or possessed thereof, as personal estate now passes to the personal representatives.

Imagine how this would have shocked the founders of so much of the law cited in many pages of the appellant's factum, as if binding us now.

I most respectfully submit that if we would correctly interpret and construe the later legislation we have to consider as bearing upon the issues raised herein, we must bear in mind the true meaning of s. 5.

The sections following are in harmony therewith but need not be quoted until we come to ss. 16 and 17, which are as follows:—

> 16. Illegitimate children shall inherit from the mother as if they were legitimate, and through the mother if dead, any property or estate which she would, if living, have taken by purchase, gift, devise, or descent from any other person.
>
> 17. When an illegitimate child dies intestate, without issue, the mother of such child shall inherit.

Then we have the Land Titles Act of 1894, of which the general tenor is the same and in that we have ss. 14 and 15, which are as follows:—

14. Illegitimate children shall inherit from the mother as if they were legitimate, and through the mother, if dead, any land which she would, if living, have taken by purchase, gift, devise or descent from any other person.

15. When an illegitimate child dies intestate, without issue, the mother of such child shall inherit any land which the said child was the owner of at the time of his death.

The course of succession generally was also changed by this Act, and the heir was superseded by the next of kin by s. 3, which is as follows:—

3. Land in the Territories shall go to the personal representatives of the deceased owner thereof in the same manner as personal estate now goes, and be dealt with and distributed as personal estate.

I agree with the learned Chief Justice of the court below that all this must be taken as an explicit waiver by the Crown of its right of escheat in favour of the mother and I may add that the clear resultant effect of the foregoing helps us to interpret and construe in a wider sense than appellant's counsel urges we can.

I can conceive that the word "descent" might be given a much more limited meaning than has been given it by the Court of Appeal, but I submit that in light of the foregoing history of the legislation, and adding thereto much of the history thereof, given us by the learned Chief Justice, which I have not seen necessary to repeat, we must interpret and construe the said word "descent" as it evidently was intended to be interpreted and construed by the legislators using it.

To discard that, to a Canadian, almost self-evident meaning, and substitute the meaning an English Parliamentary draftsman possibly would have attached thereto, and rejected it, and substituted something else more absolutely accurate, would deprive the legislation of any effect.

I submit we must try to give it some effect and doing so we must adopt the meaning given it in the court below.

When we have done that this appeal in my opinion fails.

All that ensued upon the creation of the province of Saskatchewan was obviously the result of the negotiations between the then Dominion Government and those suppliants desiring the creation of a new province, or indeed two new provinces, for the creation of Alberta as a province was considered and disposed of at the same time.

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And the Saskatchewan Act (being 4-5 Edw. VII, c. 42 of the Dominion Parliament) declared by s. 3 thereof as follows:—

3. The provisions of The British North America Acts, 1867 to 1886, shall apply to the province of Saskatchewan in the same way and to the like extent as they apply to the provinces heretofore comprised in the Dominion, as if the said province of Saskatchewan had been one of the provinces originally united, except in so far as varied by this Act and except such provisions as are in terms made, or by reasonable intendment may be held to be, specially applicable to or only to affect one or more and not the whole of the said provinces.

And by s. 16 thereof all the laws and regulations made thereunder were, so far as not inconsistent therewith, continued in force.

I see nothing in said Act that interferes with the said enactments in question herein, or the interpretation and construction thereof in the sense I have suggested and which has been adopted by the judgment appealed from.

It so happened that the only large question dealt with by said Act and the only one pretended to be inconsistent with said law, is s. 21 of said Saskatchewan Act, which reads as follows:—

21. All Crown lands, mines and minerals and royalties incident thereto, and the interests of the Crown in the waters within the province under The North-West Irrigation Act, 1898, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, subject to the provisions of any Act of the Parliament of Canada with respect to road allowances and roads or trails in force immediately before the coming into force of this Act, which shall apply to the said province with the substitution therein of the said province for the North-West Territories.

It has been submitted to us in course of argument herein that inasmuch as the granting of

Crown lands, mines and minerals and royalties incident thereto

were to continue vested in the Crown and be administered by the Government of Canada, the right of escheat was intended to belong to the Crown in right of the Dominion.

I cannot see anything therein to warrant such a pretension. Indeed if such a thing had been thought of I imagine it would, if so decided, have been expressed in entirely different language.

The right of escheat, of course (where existent, as it is not herein), belongs to the Crown, but the question remains whether of the Crown in right of the Dominion or of the province.

The case of *The Trusts & Guarantee Company* v. *The King* (1), does not, whatever it decides, determine that point, for, as Chief Justice Haultain points out, the opinion of our former Chief Justice, Sir Charles Fitzpatrick, held expressly another way, and I, and Mr. Justice Brodeur, certainly were not of the opinion that there was an escheat in favour of the Crown in right of the Dominion.

I may be permitted here, with great respect, to submit that neither the said judgment, nor that in *Attorney General of Ontario* v. *Mercer* (2) goes quite as far as submitted in the judgment appealed from.

For the present I feel no necessity for passing upon the question, inasmuch as there is in the view above expressed, no ground for escheat.

The newly created legislature re-enacted the law as it had stood under Dominion legislation, and with the result that William Stone, according to the opinion of the court below, with which I agree, is the party entitled to receive what remains after the due administration of the estate of the late Enos Stone in the hands of the administrator.

I would therefore dismiss this appeal with costs of all parties to be paid by the appellant.

Appeal dismissed.

Solicitors for the Attorney General of Canada: *Turnbull, Turnbull & Kinsman.*

Solicitor for the Attorney General of Saskatchewan: *H. E. Sampson.*

Solicitors for the respondent W. Stone: *Begg, Hayes & Friesen.*

(1) [1916] 54 Can. S.C.R. 107.

(2) [1883] 8 App. Cas. 767, at pp. 778-9.