

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Alfred Woolley and others, on behalf of the Coliban Mining Company, v. The Attorney General of Victoria, from the Supreme Court of the colony of Victoria; delivered 6th February 1877.

Present :

LORD BLACKBURN.

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THEIR Lordships are of opinion that this appeal must fail. The point is an extremely narrow one, though it may be one of considerable importance. It is simply whether upon the sales of waste lands of the Crown, which are set forth in the bill, the gold that might be found in such lands passed to the purchasers, there being no words in the grants from the Crown expressly granting it. Now whatever may be the reasons assigned in the case in *Plowden* for the rule thereby established, and whether they approve themselves or not to modern minds, it is perfectly clear that ever since that decision it has been settled law in England that the prerogative right of the Crown to gold and silver found in mines will not pass under a grant of land from the Crown, unless by apt and precise words the intention of the Crown be expressed that it shall pass. It was fairly conceded by the learned counsel for the Appellant that this rule must be taken to have been introduced as part of the common law of England into the colony

of Victoria. The question, therefore, resolves itself into this: whether, the Statute 5 & 6 Vict. cap. 36 has so modified the common law, that a sale of waste lands under that Statute must be taken to include a grant of the gold and silver that may be found under the lands so granted.

It is upon the construction of this Statute alone that the present question turns. The grants in question were made in the year 1853, and, therefore, before the passing of the Statute of the 18 & 19 Vict. cap. 55, when the Crown in 1855, whilst sanctioning the Act of the Local Legislature which is known as the Constitution Act, formally transferred its rights in the gold and silver in the colony to be dealt with by the Colonial Legislature.

Their Lordships have carefully considered the arguments addressed to them, and the provisions of the Statute 5 & 6 Victoria, cap. 55, and they can find nothing in the latter which leads them to the conclusion that a construction ought to be applied to a grant of Crown lands under that Statute different from that which a similar grant would obtain in this country. The object of the Act was to empower the Governor of the colony to deal with the waste lands of the Crown in the colony, by putting them up for sale under certain conditions by public auction. The Crown seems still to have retained a certain interest in and power of disposition over the proceeds to be realized by the sales; for the 19th section provides that, "subject to the charge above mentioned," meaning the charge mentioned in the 18th section for the expenses of surveying and the like, "the gross proceeds of the sale of the waste lands of the Crown in each of the colonies shall be appropriated and applied to the public service of the said colonies respectively, in such manner as Her Majesty or the

“ Commissioners of Her Majesty’s Treasury, or
“ any three of them, shall from time to time
“ direct.” It is expressly provided that one half
at least shall be applied to the purpose of
emigration; but, subject to that provision, it
would seem that there remained in the Crown
as represented by the Home Government
the power of directing the application of the
proceeds to be realized by the waste lands.
There is no reference to the rights of the Crown
in the precious metals to be found under the
soil; and it is a recognized principle of the
construction of statutes that the prerogative
rights of the Crown can be affected only by
express words or necessary implication. The
state of things that existed when these grants
were made has been altered by the later Imperial
Statute and the subsequent legislation in the
colony; but with the effect of this we have not
now to deal.

Their Lordships therefore fully concur with
Mr. Justice Molesworth in the reasons assigned
by him for his judgment; and they will humbly
recommend Her Majesty to confirm that judg-
ment, and to dismiss this Appeal with costs.

