1966
*Nov. 29
1967
Feb. 7

PATRICK HARRISON & COMPANY LIMITED (*Respondent*) ..... APPELLANT;

AND

THE ATTORNEY-GENERAL FOR MANITOBA (*Applicant*) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Mines and mining—Statute applying to "Mining, quarrying and other works for the extraction of minerals from the earth"—Contractor contracting to prepare shafts and drifts for mines—Whether contractor's operations fell within provisions of statute—The Employment Standards Act, 1957 (Man.), c. 20, s. 25(d).

The appellant contracted with a certain company to prepare shafts and drifts for mines to be used by that company for the extraction of minerals at two locations in Manitoba. The appellant and the Minister of Labour for Manitoba agreed that the appellant should deposit a sum of money in the Employees' Wages Trust Account, an account in the control of the Minister of Labour. The amount of that sum of money should be determined by the decision as to whether the appellant's operations were governed under the provisions of *The Employment Standards Act* or *The Construction Industry Act,* and such determination would be made by the Court of Queen's Bench upon application on behalf of the Minister of Labour. Thereafter an application was made by the respondent Attorney-General. The trial

*PRESENT: Taschereau C.J. and Martland, Judson, Ritchie and Spence JJ.

court judge found that the appellant's operations were within *The Employment Standards Act* and an appeal from his judgment was dismissed by the Court of Appeal. A further appeal was then brought to this Court.

The issue was to determine whether or not the appellant's operations fell within s. 25(*d*) of *The Employment Standards Act*, 1957 (Man.), c. 20. Section 25(*d*) in defining "plant" refers to Schedule A, item 1 of which reads: "Mining, quarrying and other works for the extraction of minerals from the earth."

Held: The appeal should be dismissed.

The word "mining" itself was sufficient to cover the appellant's operations. *Davvell v. Roper* (1855), 24 L.J. Ch. 779; *Re Morgan, Vachell v. Morgan*, [1914] 1 Ch. 910, applied.

If the phrase "other works for the extraction of minerals from the earth" were to be taken as modifying or limiting the word "mining", the appellant's operations would still be covered. The purpose to be attained by the performance of the appellant's contract was the extraction from the earth of valuable minerals and therefore the construction was for that purpose. The driving into the earth of the shafts, and the driving therefrom of horizontal drifts, was mining.

APPEAL from a judgment of the Court of Appeal for Manitoba, dismissing an appeal from a judgment of Wilson J. Appeal dismissed.

Alan Sweatman, Q.C., and *T. G. Mathers*, for the appellant.

A. Kerr Twaddle, for the respondent.

The judgment of Taschereau C.J. and Martland, Ritchie and Spence JJ. was delivered by

SPENCE J.:—This is an appeal from the judgment of the Court of Appeal for Manitoba which dismissed an appeal from the judgment of Wilson J.

The matter came before the learned trial judge on an agreed statement of facts which is quite brief and which I quote:

AGREED STATEMENT OF FACTS

Patrick Harrison & Company Limited (hereinafter called "the Company") is a corporation incorporated under the laws of Canada and is under contract with International Nickel Company of Canada, Limited (hereinafter called "International") a company with which it has no connection other than under such contracts to prepare shafts and drifts for mines to be used by International for the extraction of minerals at two locations in Manitoba, namely, Thompson and Birchtree. Each undertaking is the subject of a separate contract. A true copy of the contract with respect to the Birchtree undertaking is attached hereto marked Exhibit A.

1967

PATRICK HARRISON & CO. LTD. v. ATTORNEY-GENERAL FOR MANITOBA

Spence J.

The contract with respect to the undertaking at Thompson is in the same terms except for the specifications as to the work to be performed. The location of each of the undertakings is within one of the areas set out in Schedule B of The Employment Standards Act.

At each location, the Company's heavy equipment consists of compressors, hoists, clams used for sinking shafts which hang from mine timbers, drills, Euclid Trucks and bulldozers.

An outline of the work done by the Company is as follows:

The area where the shaft is to be sunk is prepared for excavation and the shaft collar is then made down to bed rock in which the bearing timbers are inserted and cemented in. Over this the head frame is built with a bind for the disposal of waste rock. The head frame holds the sheave wheels over which the bucket cables are operated to remove waste rock.

After the collar and the head frame are constructed, benching is commenced, that is, the sides of the shafts are excavated alternatively so that the workmen always have a shelf from which to work. This is continued until the shaft is excavated to the contract depth.

As work in the shaft progresses stations are built at designated levels. These stations are starting points for the drifts.

When the shaft is completed, drifts are then driven from the stations in a direction requested by International to the main ore bodies. From the drifts, raises are driven from one level to the other. In the process of driving the drifts track and pipes for water, air and electricity are installed. Once the shaft, drifts and raises are completed the Company is through with its work and International moves in to commence the extraction of ore.

The company may on occasions encounter small ore bodies in the process of driving drifts and raises and this ore is put to one side for International. The Company is in no way responsible for the actual extraction of ore.

Occasionally after the shaft is sunk and the stations constructed, the Company is not called upon to drive the drifts as the station is close enough to the main ore body for International to commence mining from the stations. Not all shafts that are sunk turn out to be mines as International, depending on geological tests, etc., may decide to move elsewhere. The Company sinks a shaft under a separate contract and the driving of drifts in each shaft sunk is a separate contract to the sinking of the shaft. The two shafts in question with drifts from them are however now operating mines.

International treated the payments to the Company under both contracts as capital costs of the mine and not as expenses of operating the mine.

On its payroll the Company has designated certain employees as "miners", "timbermen", "hoistmen" and "trackmen".

Attached hereto is a specimen of the Company's stationery.

The appellant and the Minister of Labour for the Province of Manitoba agreed that the appellant should deposit a sum of money in the Employees' Wages Trust Account, an account in the control of the Minister of Labour. The amount of that sum of money should be determined by the decision as to whether the appellant's opera-

tions were governed under the provisions of *The Employment Standards Act*, 1957 (Man.), c. 20, or *The Construction Industry Wages Act*, 1964 (Man.), c. 9, and such determination would be made by the Court of Queen's Bench upon application on behalf of the Minister of Labour. Thereafter, an application was made by the respondent Attorney-General to the Court of Queen's Bench under the provisions of Rule 536 of that Court which Rule is in the following terms:

> 536. Where the rights of any person depend on the construction of any statute, by-law, deed, will, or other instrument, he may apply by way of originating notice, on notice to all parties concerned, to have his rights declared and determined.

It will be seen that the whole issue is to determine whether or not the appellant's operations fall within s. 25(*d*) of the said *Employment Standards Act*. That section is, in fact, a definition section, and cl. (*d*) defines "plant" as follows:

> (*d*) "plant" means any establishment, works, or undertaking, in or about any industry set out in Schedule A, but does not include any municipal or other public body.

Schedule A referred to in the definition has as item 1:

> 1. Mining, quarrying and other works for the extraction of minerals from the earth.

The learned trial court judge was of the opinion that the words "for the extraction of minerals from the earth" related to the immediately antecedent words "other works", and that they therefore could not be taken to define the word "mining". The learned judge examined the contract between the appellant and the mine owner, the International Nickel Company of Canada Limited, in detail, to determine whether the subject of that contract was "mining" as that word had been construed in a series of cases to which he referred.

Considering the words mining and quarrying alone, with respect, I am in full agreement with the conclusions of the learned trial judge, that the operations of the appellant company would certainly come within the word "mining". I need cite only two authorities which I adopt in coming to that conclusion.

1967

PATRICK HARRISON & CO. LTD. v. ATTORNEY-GENERAL FOR MANITOBA

Spence J.

In *Davvell v. Roper*[1], Kindersley, V.C., said at p. 780:

> Mining is when you begin on the surface, and, by sinking shafts, you work underground in a horizontal direction, making a tunnel as you proceed, and leaving a roof overhead.

And in *Re Morgan, Vachell v. Morgan*[2], Sargant J. said at p. 918:

> The sinking of the shaft is obviously a process for the performance of working the mines and forms part of the working of the mines, although no single piece of coal should in fact be hewn.

The words of the Schedule, however, were not simply mining and quarrying but "mining, quarrying and other works for the extraction of minerals from the earth". As I have said, the learned trial judge took the words "for the extraction of minerals from the earth" as relating only to the immediately antecedent words "other works". That interpretation would result in three categories being dealt with in the Schedule:

(*a*) mining,
(*b*) quarrying, and
(*c*) other works for the extraction of minerals from the earth.

It is difficult to understand why mining should be separated from other works for the extraction of minerals from the earth by the insertion between those two categories of quarrying. It would have appeared more logical to have had the Schedule read:

(*a*) mining,
(*b*) other works for the extraction of minerals from the earth, and
(*c*) quarrying.

For the purpose of the present case, however, it is not necessary to consider whether the Schedule applies to the operation of quarrying without the removal of minerals from the earth. The Schedule certainly does apply to mining and to other works for the extraction of minerals from the earth. As I have said, the word "mining" itself is sufficient to cover the appellant's operations. If the phrase "other works for the extraction of minerals from the earth" were to be taken as modifying or limiting the word "mining", the appellant's operations would still be covered.

[1] (1855), 24 L.J. Ch. 779. [2] [1914] 1 Ch. 910.

The services performed by the appellant under its contract with the International Nickel Company were "mining . . . for the extraction of minerals from the earth". The word "for" is an ordinary English word and should be so interpreted. The fourth meaning assigned to that word in the Shorter Oxford Dictionary and that which I believe is the applicable meaning in the phrase under consideration is "with the object or purpose of". The only object or purpose to be attained by the performance of the contract between the appellant and the International Nickel Company was the extraction from the earth of valuable minerals and therefore the construction was for that purpose. Certainly the driving into the earth of those shafts, and the driving therefrom of horizontal drifts, was mining.

It should be remembered that what is brought within the provisions of the statute is "any works or undertaking in or about any industry" set out in the Schedule. Certainly a work such as that constructed by the appellant under the contract was a work in or about the industry of mining for the extraction of minerals from the earth. Indeed, the minerals could not be extracted without the construction of the work by the International Nickel Company of Canada Limited or, as in the present case, by a contractor.

The appeal should be dismissed with costs.

JUDSON J.:—I agree with Spence J. subject to this. I agree with the learned trial judge and the Court of Appeal that the words in question mean:

(*a*) mining;

(*b*) quarrying, and

(*c*) other works for the extraction of minerals from the earth,

and that "mining" and "quarrying" are not modified by the words "for the extraction of minerals from the earth".

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: Pitblado, Hoskin & Co., Winnipeg.

Solicitors for the respondent: Johnson, Jessiman, Gardner, Twaddle & Johnson, Winnipeg.