In the Privy Council.

No. 61 of 1915.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE BONANZA CREEK GOLD MINING COMPANY LIMITED .. .. (*Suppliant*) *Appellant*,

AND

HIS MAJESTY THE KING .. .. (*Respondent*) *Respondent*,

AND

THE ATTORNEYS-GENERAL FOR THE PROVINCES OF ONTARIO, QUEBEC, NOVA SCOTIA, NEW BRUNSWICK AND BRITISH COLUMBIA .. .. *Intervenants*.

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PART I

STATEMENT OF CASE

This is an appeal from the judgment of the Honourable Mr. Justice Cassels, sitting in the Exchequer Court of Canada, pronounced on the 28th day of April, 1914, dismissing the Petition of Right of the Suppliant upon certain questions of law argued before him pursuant to his order of the 14th day of March, 1914.

"LET RIGHT BE DONE."—Grey.

In the Exchequer Court of Canada

TO THE KING'S MOST EXCELLENT MAJESTY:

City of Toronto
County of York } To Wit:

BETWEEN:

THE BONANZA CREEK GOLD MINING COMPANY, LIMITED,
Suppliant,

AND

10 HIS MAJESTY, THE KING,
Respondent.

PETITION OF RIGHT

The humble petition of THE BONANZA CREEK GOLD MINING COMPANY, LIMITED, sheweth as follows:—

1. That the Suppliant is a Company incorporated under the Ontario Companies Act by letters patent of the Lieutenant-Governor of the Province of Ontario in Council, bearing date the 23rd day of December, 1904, with power, amongst other things, to carry on the business of mining in all its branches, and to acquire by purchase, lease or otherwise, real and personal 20 property, including mines, mining claims, and mining locations and to acquire by purchase, lease or otherwise, rights, powers, concessions, privileges and franchises to enable the Company to properly exercise and carry on all or any of its objects, and has by assignments, duly filed in the office of the Minister of the Interior, become possessed of and entitled to all the estate, right title and interest of C. A. Matson and his associates, and J. J. Doyle and his associates, in the mining properties hereinafter referred to, and of all their rights under the several leases and agreements hereinafter referred to.

2. On the 22nd day of July, 1898, one J. J. Doyle and his associates made application to the Mining Recorder at Dawson in the district of the 30 Yukon for a grant of the following hydraulic mining location on Bonanza Creek, viz., one mile between Boulder Creek and Fox Gulch on the hill (hereinafter referred to as "the Doyle location").

On the 2nd day of November, 1898, one C. A. Matson and his associates made an application to the Mining Recorder at Dawson for the grant of hydraulic Mining location on Bonanza Creek as follows:—

Right limit of Fox Gulch to left limit of Adams, one mile wide, 500 feet above the Creek (hereinafter referred to as "the Matson location").

3. The said applications were in each case made by the applicants with the *bona fide* intention of acquiring the right to operate by hydraulic method over a large area of low grade gold bearing land, which could not be profitably worked by the placer method and with the intention of expending large sums 10 of money in the establishment and operation of hydraulic plants upon the territory so applied for.

4. It was and is essential to the successful operation of such hydraulic method upon the said locations that the operators should have access to and the right to operate upon a considerable portion at least, of the hillside in the immediate neighborhood of the stream in order to enable them to wash away the face of the slope to get into the ground at the rear and also to provide a dumping ground for the refuse dirt washed down from the higher portions of the locations.

5. Notice of the said applications was posted in the office of the Gold 20 Commissioner at Dawson, but action upon the said applications by the Government was deferred for several months, and while the said applications were still pending, a number of individuals conceived the idea of locating placer mining claims in the front portions of the lands covered by such applications, in the majority of cases not for the *bona fide* purpose of mining, but in order to prevent the inclusion of these claims in the applicants' territory and to compel the applicants to purchase the said claims in order to obtain access to the slope of the Creek Valley, without which access the hydraulic method of mining could not be properly applied to the locations in question.

6. A list of the placer claims so located within the boundaries of the 30 Doyle and Matson locations, after the dates of the said applications and prior to the dates of the closing order referred to in the ninth paragraph hereof, and in good standing at the respective dates of the issue of the several leases referred to in the fourteenth and fifteenth paragraphs hereof, is set forth in Schedule "A" hereto.

7. In the month of March, 1899, the said Doyle and his associates became aware of the fact that numerous placer claims were being located upon the territory covered by their own application, and on the 22nd day of March, 1899, drew the attention of the Commissioner of the Yukon Territory to the facts set forth in the four preceding paragraphs hereof and asked that any 40 placer claims staked out as above set forth, which should subsequently be abandoned, together with any fractions found to exist between them, should

be allowed to revert to and become part of the ground included in the location of the said Doyle and his associates.

8. On the 29th day of March, 1899, an order of His Excellency the Governor-General in Council was passed directing that all fractional claims in the Yukon Territory be reserved for the Crown.

9. On the 30th March, 1899, the Minister of the Interior instructed the Commissioner of the Yukon Territory to reserve until further notice, from entry the Hill Claims and Bench Claims on Bonanza Creek, which were not entered for at the date of the receipt of such instructions by the Commissioner,
10 and the said instructions were subsequently approved and confirmed by order in Council of the 5th September, 1899.

10. On the 31st day of March, 1899, the Commissioner for the Yukon Territory advised the Minister of the Interior of the application of the said Doyle, and his associates, for reverted and fractional claims set forth in Paragraph seven, and recommended the said application for favorable consideration.

11. On the 9th day of June, 1899, the said Doyle and his associates made application through their Ottawa agents to the Minister of the Interior for all placer mining Claims within the limits of the Doyle location as applied
20 for which had been located since the 22nd day of July, 1898, the date of the said application, and on the 12th day of June, 1899, the Secretary of the Department of the Interior wrote to the said Ottawa agents stating that all claims which should be abandoned and cancelled from time to time on the location would be leased to the said Doyle and his associates.

12. On the 10th day of June, 1899, Her late Majesty Queen Victoria, represented therein by the Minister of the Interior of Canada by Lease No. 2, granted and leased to the said Doyle and his associates for a term of twenty years, a tract of land on the west side of Bonanza Creek, between Boulder Creek and Fox Gulch, in the rear of and adjoining the Bench Mining Claims,
30 such tract of land having a frontage of fifty-five chains on the general bearing of the Bonanza Creek, containing 213 acres more or less. The lands included in the said lease comprise the rear portion of the Doyle location and are of no value for hydraulic mining without the lands lying in front of them.

13. On the 11th day of September, 1899, the said Matson and his associates made application to the Commissioner of the Yukon Territory similar to the application of the said Doyle and his associates referred to in the seventh paragraph hereof and on the 16th day of September, 1899, the said Commissioner advised the Minister of the Interior of the said application and recommended the same for favorable consideration.

40 14. On the 5th day of January, 1900, by Lease No. 8, Her late Majesty Queen Victoria, represented therein by the Minister of the Interior for Canada,

granted and leased to the said Doyle and his associates the tract of land on the west side of Bonanza Creek between Boulder Creek and Fox Gulch in front of the tract described in Lease No. 2 above referred to and in rear of and adjoining Creek Claims numbered from 25 to 34, both inclusive, below Discovery, having a frontage of sixty chains or thereabouts on the general bearing of Bonanza Creek opposite the said tract, excluding from the area of the said tract so much thereof as had been taken up and entered for under the regulations as placer mining claims, the entries for which had not been cancelled by the Mining Recorder at the date of the said Lease, the said tract
10 containing 243.78 acres more or less.

15. On the 13th day of January, 1900, by Lease No. 9, Her late Majesty Queen Victoria, represented therein by the Minister of the Interior for Canada, granted and leased to the said C. A. Matson and his associates the tract of land described in the said lease as being on the west side of Bonanza Creek between Adams Creek and Fox Gulch in the rear of and adjoining the Creek Claims on said Bonanza Creek, and having a frontage of one and a half miles or thereabouts on the general bearing of Bonanza Creek, opposite the said tract, excluding from the tract so much thereof as had been taken up and entered for under the regulations in that behalf as placer mining claims, the
20 entries for which had not been cancelled by the Mining Recorder at the date of such lease, the said tract containing an area of 875 acres more or less.

16. On the 9th day of January, 1900, a formal agreement collateral to the said leases Nos. 2 and 8, was drawn up and executed between Her late Majesty Queen Victoria, represented by the Minister of the Interior of Canada, of the one part, and John J. Doyle and his associates of the other part, (embodying the assurances previously given to the applicants as above set forth in the eleventh paragraph hereof), by which it was agreed that if any placer mining claims whatever within the tract of land included in the application of the said Doyle and his associates should at any time become for-
30 feited to the Crown because of non-compliance of the entrant with the conditions of entry, or revert or be surrendered to the Crown for any reason or cause whatsoever, the land comprised in said claim or claims should be leased by the said Minister to the said Doyle and his associates on the same conditions as are contained in the lease of the 5th January, 1900, above referred to, provided that application for such lease should be made within one year from the date when the land for which the lease was required became revested in the Crown, and that the said Doyle and his associates or their executors, administrators or assigns should within such period file in the Department of the Interior at Ottawa, a correct and satisfactory plan of the survey of the
40 said land prepared by a Dominion Land Surveyor.

17. On the 15th day of January, 1900, a similar formal agreement collateral to said lease No. 9 was executed between Her late Majesty Queen Victoria, represented by the said Minister on the one part and the said Matson and his associates on the other, with reference to the land included in the Matson location.

18. Notwithstanding the closing order of the 30th March, 1899, referred to in the ninth paragraph hereof and the Order in Council confirming same, the Department of the Interior, subsequent to the date thereof, and before the date of the said leases, without the knowledge of the said Doyle and Matson and their respective associates, issued grants of placer mining locations situate within the limits of the said Matson and Doyle locations. A list of the grants so issued is set forth in Schedule "B" hereto.

19. Notwithstanding the said leases and the said agreements, the Department of the Interior, subsequent to the date thereof and in violation of
10 the rights thereunder of the said Doyle and Matson and their respective associates issued grants of placer mining locations situate within the limits of the said Matson and Doyle locations. A list of the grants so issued is set forth in Schedule "C" hereto.

20. At the date of the signing of the agreements referred to in the 16th and 17th paragraphs hereof, the location and recording of placer mining claims in the Yukon Territory was governed by regulations approved by Order in Council dated 18th January, 1898, as amended by Order in Council dated the 7th day of October, 1899, and by section 39 of the said regulations as so amended every holder of a placer mining claim was entitled to hold his claim
20 for a period of one year only, unless during such year he should re-record the same and pay the fee required by such regulations, and also during such year should do, or cause to be done, work to the value of $200 in the manner specified by the said regulations and obtain from the Mining Recorder a certificate of such work having been done, and under the said regulations in the event of the above conditions not being complied with the claim lapsed and the location reverted to the Crown.

Under the terms of the agreements set forth in the sixteenth and seventeenth paragraphs hereof the placer mining claims of any free miners located within the limits of the said Matson and Doyle concessions, who failed to
30 comply with the conditions prescribed by the said regulations above set forth, became and were subject to the terms of the said agreements, and should have been reserved and set apart to be leased to the said Doyle and his associates, and the said Matson and his associates, but the Gold Commissioner of the Yukon and the Mining Recorder in violation of the terms of the said agreements, and in spite of the persistent protests of the said Doyle and his associates, and of the said Matson and his associates, and of their successors, persisted in assuming to grant renewals of placer mining claims and to issue certificates of performance of work done under the regulations upon placer mining claims, after the said claims had in fact lapsed and reverted to the
40 Crown and assumed to make the said renewals and certificates relate back to the date of the legal termination of the said claims, and the holders of such claims were wrongfully and illegally continued in possession thereof by the said Gold Commissioner and Mining Recorder under the authority of the said renewals and certificates, and the petitioner and its predecessors in title

have thereby been deprived of the opportunity of obtaining leases of the said reverted claims under the terms of the said agreements.

21. A list of the claims in respect of which renewals and certificates of work were wrongfully and illegally issued in violation of the rights of the petitioner and its predecessors in title together with the dates of such renewals and certificates are set forth in Schedule "D" hereto.

22. In the said Placer Mining Regulations as amended it was expressly provided that no claim forfeited from whatever cause should be re-located, but that every such claim should revert to the Crown to be disposed of as 10 the Minister of the Interior should direct and it was the intention of both parties to the said agreements that this provision should not be departed from in such a way as to prejudice the position of the said Matson and Doyle and their associates.

23. On the 4th day of September, 1900, an Order in Council was passed rescinding the provision set forth in paragraph twenty hereof, and on the same day another Order in Council was passed cancelling the Order in Council of the 5th of September, 1899, referred to in paragraph nine hereof, and throwing open to entry Hill and Bench claims on Bonanza Creek referred to in the said Order in Council of the 5th day of September, 1899.

20 24. On the 21st day of January, 1901, an Order in Council was passed rescinding the Order in Council dated the 28th day of March, 1899, referred to in paragraph eight hereof and directing that fractional mining claims should not after the date of such Order in Council be reserved for the Crown.

25. By Order in Council dated 13th day of March, 1901, new placer mining regulations were substituted for the amended regulations of the 18th day of January, 1898, above referred to.

But by section 41 of the said new regulations the requirements with reference to the payment of the annual fee and the obtaining of the certificate of work during the currency of the lease were continued.

30 By section 45 of the said Regulations, the Minister of the Interior was authorized to dispose of any, whole or fractional mining claims reserved to the Crown in the Yukon Territory in such manner as he might decide.

26. At the time of the signing of the collateral Agreements referred to in the sixteenth and seventeenth paragraphs hereof it was well understood by both parties to the said Agreements that the said Matson and Doyle and their respective associates were dependent upon the Officials and Records of the Department of the Interior at Dawson for information with reference to Placer Mining claims from time to time reverting to the Crown, and that without such information applications for leases of the said reverted claims 40 could not be made within a year from the time of the same reverting to the

Crown, nor could surveys of such claims be made within the said period, and it became and was the duty of the Department of the Interior under the said agreements to keep records from time to time sufficient to enable the said Matson and Doyle and their respective associates to obtain the said information by the exercise of reasonable diligence and it also became the duty of the Department of the Interior to keep such records open for inspection at reasonable times and upon reasonable terms, but the said Department did not in fact keep a proper record of such claims, and the records of Placer Claims and files of correspondents relating thereto were until the month of
10 October, 1902, closed to public inspection, and the said Matson and Doyle and their respective associates were repeatedly refused access thereto.

Although the said Matson and Doyle and their respective associates repeatedly applied for the information in relation to such reverted claims necessary to enable them to apply for leases of same, and to cause surveys thereof to be made, it was by reason of such negligence and wrongful action of the Department of the Interior impossible to obtain such information and consequently impossible to comply with the said provisions of the contracts in question.

27. On or about the 4th day of November, 1902, the Minister of the
20 Interior wrote to the solicitors for the said Matson and Doyle and their respective associates assuming to cancel the said collateral agreements referred to in the sixteenth and seventeenth paragraphs hereof, although no ground for such cancellation ever existed: in pursuance of the said letter of cancellation of the said agreements a public notice was posted in the Mining Recorder's office at Dawson stating that the agreements were cancelled and notifying the public that the reverted claims within the said locations were open for re-location.

28. Notwithstanding the repeated protests of the said Matson and Doyle and their respective associates, and their successors in title, the Depart-
30 ment of the Interior persisted in treating the said agreements referred to in the sixteenth and seventeenth paragraphs hereof as cancelled until the winter of 1904 and 1905 and the notice in the Mining Recorder's office at Dawson referred to in paragraph twenty-five hereof was maintained and advertisements were published in the newspapers in Dawson and were posted in the Gold Commissioner's office inviting to locate the reverted claims within the said location.

29. During the year 1903, notwithstanding the strong protests of the said Matson and Doyle and their respective associates, a very large number of reverted placer mining claims were thrown open within the said locations,
40 almost all of which were re-located and entered as Placer Mining Claims by individuals. A list of the claims so re-located is set forth in Schedule "E" hereto: of the said claims about twenty are still in existence, while about seventy have again reverted to the Crown.

30. After the second reversion to the Crown of the claims referred to in the last preceding paragraph hereof, the petitioners and their predecessors in title from time to time applied to the Gold Commissioner and the Mining-Recorder for leases of the said reverted claims, but the Department of the Interior, in addition to the contentions hereinbefore referred to, set up a further contention that the petitioners and their predecessors were not entitled under their agreements to call for these claims on the ground that the same having reverted to the Crown and having again been located and a second time reverted, were not subject to the provisions of the collateral agreements 10 in question, and the Department of the Interior persisted on this additional ground in their refusal to grant such claims until the month of March, 1907.

31. During the years 1903, 1904 and 1905, the petitioners and their predecessors in title have continued their applications for claims reverting from time to time, and have expended large sums of money in the survey of such claims, but leases of the said claims have been refused to the petitioners in violation of the terms of the said agreements. A list of the claims so applied for and refused is set forth in Schedule "F" hereto.

32. In order to carry on its hydraulic operations the petitioners and their predecessors in title have been compelled from time to time to buy 20 certain of the abandoned claims, which have been allowed by the Government to be re-located, and on which gold in paying quantities has not been found, and for the purchase of such claims the petitioners and their predecessors have been compelled to expend upwards of $30,000. Particulars of the claims so purchased are set forth in Schedule "G" hereto.

33. On the 19th day of July, 1902, a placer mining claim within the limits of the Doyle location known as "Flannigan Bench" and being situated in the third tier opposite the left limit of Discovery Claim on Fox Gulch, Bonanza Creek, which was then standing in the name of one Frederick Nelson, lapsed and reverted to the Crown, owing to the failure of the said Nelson to re-record 30 the Claim, and the predecessors in the title of the Suppliants thereupon became entitled to a lease of the said claim under the terms of the collateral agreement of the 9th of January, 1900, but instead of granting a lease thereof to the predecessors in title of the suppliants an Order in Council was passed on the 7th of March, 1903, authorizing the Minister of the Interior to grant to the said Nelson a renewal of entry for the claim in question for the year then current, and the said Minister of the Interior in pursuance of such order in Council and in violation of the rights of the Suppliants and their predecessors in title granted such renewal to the said Nelson.

34. On the 16th day of September, 1904, a Placer Mining Claim known 40 as the "Nillson Hillside," being Placer Mining Claim No. 3, on American Gulch, Bonanza Creek, which was then standing in the names of one Knox and one Hamilton, lapsed and reverted to the Crown through the failure of the then owners of the location to furnish proof of work done on the Claim

during the year ending 16th September, 1904, and to obtain the certificate of work and renewal of entry required by the regulation. The said claim is within the limits of the Matson concession, and upon its reversion, as above set forth the predecessors in title of the Suppliants became entitled to a lease of the same under the terms of the collateral agreement of the 15th day of January, 1900, but instead of granting such lease to the predecessors in title of the Suppliants the Minister of the Interior on the 17th day of November, 1905, procured an Order in Council to be passed authorizing him to grant the said Knox and Hamilton a certificate of work for the year ending 16th Sep-
10 tember, 1904, and renewal of entry up to the 16th September, 1905, and such certificate and renewal was thereupon granted by the said Minister of the Interior in violation of the rights of the Suppliants.

35. Under the regulations governing Placer Mining in the Yukon Territory, approved by Order in Council of the 18th day of January, 1898, and as amended by Order in Council of the 20th day of February, 1900, and further amended by the Order in Council of the 13th day of March, 1901, it was provided that the length of a Hill Claim should not exceed 250 feet drawn parallel to the base line of the stream on which it fronts, established or to be established by the Government, and that in the event of the base line not
20 being established a free Miner might stake out the Claim on a Creek or Gulch on which it fronts, but it was made necessary for him to conform to the boundaries which the base line when established should define, and parallel lines drawn from each end of the front line at right angles thereto should constitute the end boundaries of the Claim, the rear boundary to be defined by measuring one thousand feet from the front boundary.

36. Notwithstanding the provisions of the said regulations relating to staking, registration, and surveying of claims, the Department of the Interior in many instances permitted the claims which had been located, staked and recorded, as being on certain defined portions of the Matson and Doyle loca-
30 tions to be shifted and moved to totally different portions of the said locations, and permitted new stakes to be planted and new boundaries to be established for such locations, thereby depriving the Suppliants and their predecessors in title of the property to which the said locations were so wrongfully shifted. The particulars of the locations so wrongfully shifted are set forth in Schedule "H" hereto.

37. The said Department of the Interior has also in many instances permitted the staking and recording of Placer Mining claims in utter disregard of the requirements of the regulations set forth in the thirty-fifth paragraph hereof, and has thereby encroached upon the territory comprised within the
40 leases of the Suppliants and their predecessors in title. Particulars of such encroachments are set forth in Schedule "I" hereto.

38. On the 16th day of March, 1907, His Majesty King Edward the Seventh, represented therein by the Minister of the Interior, granted a lease

to the Suppliants of certain of the reverted claims within the limits of the said Matson and Doyle concessions. The particulars of the claims so leased are set forth in Schedule "J" hereto. The said claims are, however, of small value and cannot in most instances be operated without access to the adjoining claims of which the Suppliants have been deprived by the wrongful acts of the Department of the Interior above set forth.

39. At the time of the inception of the hydraulic enterprise now carried on by the Suppliants, it was contemplated by the applicants for the Matson and Doyle locations and by the Department of the Interior that the lessees
10 of the said locations should have (as necessary to the successful operation thereof) an adequate supply of water, and in order to procure such supply an application was made on the 18th day of September, 1899, by Trustees for Matson and his associates and for Doyle and his associates, for a grant of the right to divert 4,000 miners' inches of water from the Klondike River for use upon the territory comprised within the said locations. In making the said application it was contemplated that if the water right applied for should be acquired, extensive Works should be constructed in order to pump the water to a sufficient height above the level of the locations to give a head of water adequate for the requirements of the hydraulic process, and large sums of
20 money were spent by the applicants for surveys and other expenses in connection with such contemplated work.

40. On the 5th day of March, 1900, by Grant No. 586, the Gold Commissioner of the Yukon Territory duly issued a Grant of the right for the term of ten years to divert and use 4,000 miners' inches from Klondike River for use on the lands comprised in the Doyle locations, and considerable sums of money and much time were expended in preparation for the erection of the plant necessary to utilize the waters comprised in the said Grant, and the applicants duly paid the fee of $50 required by the regulations to be paid for the said Grant.

30 41. On the 6th day of April, 1900, the Department of the Interior at Ottawa notified the Ottawa agents of the applicants for the said Water Right No. 586, that the Grant thereof had been cancelled by order of the Minister of the Interior for the reason that the Minister of the Interior had determined upon a change of policy in connection with the said water, and the said applicants were at that time assured by the Minister of the Interior that he had determined to grant a franchise to a Water Company which would deal with the whole available water of the Klondike River on a comprehensive basis and that provision would be made in connection with such franchise for the supply of an adequate quantity of water to the lessees of the Matson and
40 Doyle locations, and the said lessees in reliance upon such assurances deferred further efforts to secure water for the operation of their locations and confined their efforts to prospecting the ground by sinking shafts and building tunnels and a large amount of money was expended in this manner upon the said locations prior to the month of June, 1902.

42. No steps having apparently been taken to carry into execution the construction of work by any water Company on the lines above referred to, the said lessees on the 16th day of March, 1901, made a second application for a Grant of 4000 miners' inches of water on the Klondike River with the intention if the said Grant was made of proceeding with their original plans for the pumping of the said water into their locations, but the said lessees were unable to get the Department of the Interior to take any action whatever on the said application, and were left absolutely without any provision for a supply of water until in the said month of June, 1902, when the said 10 lessees were notified by the Department of the Interior that all extensions of time for commencing hydraulic work upon their said locations had been cancelled and that hydraulic work must be begun at once.

43. In order to comply with such requirements of the Department of the Interior the lessees on the first day of August, 1902, were obliged to purchase Water Right No. 716 which was appurtenant to certain placer claims situated within the Matson and Doyle locations and comprised a right to divert 100 miners' inches from Adams Creek, and the lessees were also obliged to purchase the placer claims to which the said water right was appurtenant, paying for the said water right and claims the sum of $28,000, and the lessees 20 subsequently expended the sum of $7,000 in improving the ditch used in connection with the said water right.

44. In order to further comply with the requirements of the Department of the Interior, the lessees on the 15th and 18th of August, 1902, applied to the Gold Commissioner of the Yukon Territory for Water Rights on Stampede Gulch and Adams Creek for use on the said Matson and Doyle locations, but the said lessees were unable to procure any action to be taken upon such applications until the 20th day of November, 1902, when Water Rights Nos. 1404 and 1405 were issued. The said Water Right 1404 grants the right to divert 100 inches of water from Stampede Gulch at the head of the 30 Gulch on the right limit thereof to be distributed for use on the Matson and Doyle locations and also granted a right of way over the ditches and flumes in a westerly direction to a dam located at 23 Adams Gulch (the point indicated under Grant No. 1405) and from such point through ditches and flumes down stream No. 19 Adams Creek, thence through ditches, flumes or pipe lines to the locations, the flumes to be on the surface of the ground and the grant to be appurtenant to the Matson and Doyle locations. Water Grant No. 1405 granted the right to the lessees of the locations to divert 200 miners' inches from about 5,000 feet above No. 10 on Adams Creek by the route of the ditch as shown on the plan attached to the said Grant and by 40 said Grant No. 1405 the applicant was given the right to divert water from the ditches, flumes, or pipe lines at any point along the route thereof for the purpose of working by hydraulic process the said Matson and Doyle locations.

45. So soon as the season opened in the spring of 1903, the lessees of the said locations commenced at once to construct the long line of ditching and

fluming required to be constructed under the said Grants, but notwithstanding the utmost diligence on their part, it was found to be impossible to complete the same by the close of the proper working season of 1903, and the said lessees accordingly endeavored to obtain from the Department of the Interior at Dawson an extension of time for the completion of the said ditches and flumes until the following season as further work upon the same could only be done during the winter season at great extra cost and with infinite trouble and hardship. Said applications were however refused and the lessees were accordingly compelled to carry on their work through the
10 winter season and finally completed the same during the winter after an enormous outlay and a great deal of suffering by their employees on account of the extreme cold weather experienced.

46. Meantime on the 31st day of January, 1903, the said lessees made application at Dawson for the right to impound water on Adams Creek and tributaries, but this right was not granted until the 6th day of July, 1905.

47. The holders of the Matson and Doyle locations incurred the expenditure referred to in the forty-fifth paragraph hereof in reliance upon their water Grants Nos. 1404 and 1405 and in the belief that the said Water Grants conferred upon them the right to use the water comprised therein for the
20 practical hydraulic working of the said locations and in the course of such working to use such water upon any claims comprised within the limits of the said locations, which might be reverted to the Crown and thus become subject to the said collateral agreements and also upon the claims within the limits of the said locations, which might be purchased or otherwise be acquired by them to enable them to operate upon the said locations.

48. On the 6th day of July, 1905, an Order in Council of the Governor-General in Council was passed granting to the holders of the said Matson and Doyle locations the right to impound water on Adams Creek by means of a dam or dams as set forth in the said Order in Council and to use the water so
30 impounded for their own purposes or to distribute and sell it for mining purposes and immediately upon the passing of the said Order in Council the holders of the said locations commenced construction of the work with a large force of men and the said dam was fully completed by the 1st of October, 1906, after the expenditure of a very large sum of money on its construction.

49. On the 31st day of August, 1905, on the *ex parte* application of the holders of junior water rights on the Adams Creek and Stampede Gulch water-shed, the Minister of the Interior assumed to order and direct that the water authorized to be diverted by Water Grants 1404 and 1405 should not be used by the holders of the Matson and Doyle locations on placer claims
40 within the limits of their locations which had been acquired by them by purchase or by reversion to the Crown and subsequent lease to such holders under the provisions of the said collateral agreements, and the said ruling has ever since been acted upon and persisted in by the Department of the

Interior at Dawson and the Suppliants and their predecessors in title have been by reason thereof prevented from using the said water on any of the claims so purchased or acquired by them.

50. The effect of the said ruling and of the consequent restriction of of the water rights of the Suppliants has been to practically put an end to the hydraulic operations upon the said concessions as it is a physical impossibility to operate said locations except in one or two confined localities without impinging upon Placer Claims purchased or acquired by the holders of the said locations.

10 51. Since the inception of the Suppliants' enterprise, the applicants and their predecessors in title have expended in actual cash in or about the operation, development and improvement of the territory comprised within their leases a sum exceeding $315,000, in addition to which very large sums have been expended in connection with collateral matters relating to the said enterprise. Owing to the obstruction, delay and loss occasioned to the Suppliants and their predecessors in title by the wrongful acts and omissions of the Department of the Interior hereinbefore set forth, the Suppliants and their predecessors in title have only been able during the said period to take out of their locations gold to the value of less than $130,000.

20 52. The placer mining claims within the limits of the Suppliants' locations wrongfully withheld or withdrawn from the Suppliant and their predecessors in title as hereinbefore set forth comprised some of the richest portions of the said locations. A list of the said placer claims showing their respective areas per square foot is set forth in Schedule "K" hereto.

53. By reason of the wrongful acts and omissions of the Department of the Interior and its officers hereinbefore set forth, the Suppliant has been deprived of very valuable portions of the Territory to which it was lawfully entitled, and has been seriously hindered and obstructed in carrying on its enterprise, and has otherwise suffered very great loss and damage, particulars
30 of which are as follows:

(*a*)	By reason of the matters complained of in paragraph eighteen hereof	$ 1,056,998.00
(*b*)	By reason of the matters complained of in paragraph nineteen hereof	410,878.00
(*c*)	By reason of the matters complained of in paragraphs twenty and twenty-one hereof	11,734,314.00
(*d*)	By reason of the matters complained of in paragraph twenty-nine hereof	931,526.00
(*e*)	By reason of the matters complained of in paragraph thirty-one hereof	595,422.00

40

(*f*)	By reason of the matters complained of in paragraph thirty-two hereof	$ 31,950.00
(*g*)	By reason of the matters complained of in paragraph thirty-three hereof	59,603.00
(*h*)	By reason of the matters complained of in paragraph thirty-four hereof	125,355.00
(*i*)	By reason of the matters complained of in paragraph thirty-six hereof	1,788,143.00
(*j*)	By reason of the matters complained of in paragraph thirty-seven hereof	484,845.00
(*k*)	By reason of the matters complained of in paragraph forty-one hereof	200,000.00
(*l*)	By reason of the matters complained of in paragraph forty-nine hereof	200,000.00
		$17,619,034.00

10

54. The Suppliant therefore prays that it may be paid the said sum of $17,619,034.00 together with the costs of this petition.

Dated at Toronto,
the 27th day of January, 1908.

JOHN H. MOSS,
Counsel for Petitioner.

(Schedules not printed, as not being material in this Appeal.)

In the Exchequer Court of Canada

IN THE MATTER OF A PETITION OF RIGHT.

BETWEEN:

THE BONANZA CREEK GOLD MINING COMPANY, LIMITED,
Suppliant,

AND

HIS MAJESTY, THE KING,
Respondent.

Filed January, 1909.

10

ANSWER TO PETITION OF RIGHT

The answer of Honourable Allen Bristol Aylesworth, His Majesty's Attorney-General for the Dominion of Canada, on behalf of His Majesty, to the Petition of Right of the Suppliant.

In answer to the said Petition the said Honourable Allen Bristol Aylesworth saith as follows:

1. The Respondent denies that the Suppliant has now or ever has had the power either under Letters Patent, license, free miner's certificate, or otherwise, to carry on the business of mining in the District of the Yukon, or to acquire any mines, mining claims or mining locations therein, or any
20 estate or interest by way of lease or otherwise in any such mines, mining claims or locations.

2. Should a free miner's certificate have been issued to the Suppliant the Respondent claims that the same is and always has been invalid and of no force or effect—that there was no power to issue a free miner's certificate to the Suppliant, a Company incorporated under Provincial Letters Patent, and that there was no power vested in the Suppliant to accept such a certificate.

3. The Respondent denies that the three leases in the 12th, 14th and 15th paragraphs of the petition mentioned or any of them were assigned to the Suppliant, or that the Suppliant had any power to accept an assignment
30 thereof.

4. The Respondent denies that the agreements in the 16th and 17th paragraphs of the petition mentioned or either of them were ever assigned to

the Suppliant, or that the Suppliant had power to accept an assignment thereof.

5. If assignments of said agreements or of either of them to the Suppliant were executed the Respondent claims that the same were and are invalid and of no force or effect, as the consent in writing thereto of the Minister of the Interior was never obtained.

6. The Respondent denies that the claims in the 18th, 19th, 20th, 21st, 29th, 31st, 32nd, 33rd, 34th, 36th, 37th, 41st and 49th paragraphs of the petition mentioned or any of them, or any other claim in the petition mentioned, were assigned to the Suppliant, or that the Suppliant had power to
10 accept an assignment thereof, or that said claims being mere rights to litigate were capable of assignment.

7. If any right of action in respect of said claims or any of them ever arose, the Respondent claims that the same arose more than six years prior to the filing of the petition herein and that such rights of action, if any, have been lost by reason thereof. The Respondent pleads and claims the benefit of all Statutes of Limitation and all other Statutes and laws in respect of the limitation of the time within which actions or proceedings may be brought or claims made.

8. The lease to Doyle and his associates of the 10th day of June, 1899,
20 in the 12th paragraph of the petition mentioned of the parcel of land in said lease described is thereby declared to be subject to the following among other exemptions, restrictions and provisions:

(3). That the said lease or demise shall be subject to the rights or claims, but to such rights or claims only, of all persons who may have acquired the same under the regulations of any Order of the Governor-General-in-Council up to the date upon which the Gold Commissioner shall have posted or caused to be posted, in the office of the Mining Recorder for the District in which the said demised premises are situated, the notice mentioned or referred to in number thirteen (13) of the Regu-
30 lations for the disposal of Mining Locations in the Yukon Territory to be worked by hydraulic or other mining process, which were approved of under the said Order in Council of the third day of December, A.D. 1898.

(5). That the lessees shall not nor will assign, transfer or sublet the said demised premises, or any part thereof, without the consent in writing of the Minister.

(13). Provided also that Her Majesty does not in any way warrant that there shall be a sufficient quantity of water in the said creeks or river to admit of operations under this lease, and that the lessees shall have
40 no right to compensation should it be found impossible for that or for

any other reason to carry on such operations, it being hereby declared and agreed that this lease is taken by the lessees entirely at their own risk.

(18). Provided also than any notice, demand or other communication which Her Majesty or the Minister may require or desire to give or serve upon the lessees may validly be given or served by his Deputy or by the Secretary or the Assistant Secretary of the Department of the Interior, or by the Commissioner of the Yukon Territory, or by the Gold Commissioner thereof, or of the District within which the demised
10 premises are situated.

Provided also that if in consequence of any cause whatsoever the said demised premises are found to include a portion of the location or premises demised to any other person under the Regulations of any Order of the Governor-General-in-Council the lessee whose application was first recorded, whether it was recorded in the Department of the Interior at Ottawa, or in the office of the Gold Commissioner of the Yukon Territory, or in the office of the Gold Commissioner for the district where the locations or demised premises are situated, shall have priority.

Provided also that this demise is subject to all other regulations
20 contained and set forth in the said Order in Council of the third day of December, A.D. 1898, as fully and effectually to all intents and purposes as if they were set forth in these presents.

The said lease is known as Lease No. 2, and the premises thereby demised are known as the Doyle Concession and as the Doyle Location.

9. The lease to Doyle and his associates of the 5th day of January, 1900, in the 14th paragraph of the petition mentioned, is of the tract of land therein described with the exclusion, however, from the area of the said tract of "so "much thereof as has been taken up and entered for under the regulations "in that behalf as placer mining claims, the entries for which have not been
30 "cancelled by the Mining Recorder," and in and by said lease it is declared to be subject to the following exemptions, restrictions and provisions:

(3). That the said lease or demise shall be subject to the rights or claims, but to such rights and claims only as are above-mentioned and excepted from the demise and which are now in full force and effect and not liable to cancellation under the said regulations for any default made after the date of these presents by the entrant in complying with the conditions of his entry or re-entry;

and to the exemptions, restrictions and provisions numbered 5, 13, and 18 in the said Lease No. 2. This lease is known as Lease No. 8, and the premises
40 thereby demised are known as the Doyle Concession and as the Doyle Location.

10. The lease to Matson and his associates of the 13th day of January, 1900, in the 15th paragraph of the petition mentioned of the tract of land therein described excludes from the area of the said tract "so much thereof "as has been taken up and entered for under the regulations in that behalf "as placer mining claims, the entries for which have not been cancelled by "the Mining Recorder," and in and by said lease it is declared to be subject to the exemptions, restrictions and provisions contained in the said Lease No. 2 and numbered 3, 5, 13 and 18. This lease is known as Lease No. 9 and the premises thereby demised are known as the Matson Concession
10 and as the Matson Location.

11. The agreement of the 9th day of January, 1900, in the 16th paragraph of the petition mentioned, after reference to the said Leases Nos. 2 and 8 of the tracts of land therein mentioned excepting so much thereof as was taken up for certain placer mining claims, recites that it had been agreed between the Minister of the Interior and the lessee as follows: "That if "any of the placer mining claims or any mining claims whatever within "the said tract of land shall at any time become forfeited to the Crown be- "cause of non-compliance by the entrant with the conditions of entry or "revert or be surrendered to the Crown for any reason or cause whatsoever,
20 "the land comprised in such claim or claims shall be leased by the Minister to "the parties of the second part on the same conditions as are set forth and con- "tained in the Indenture of Lease hereinbefore referred to, upon the under- "standing, however, that the parties of the second part shall apply to the "Minister for a lease of the land comprised within such claim or claims within "one year from the date upon which the same shall be revested in the Crown, "and that they shall file in the Department of the Interior at Ottawa a satis- "factory plan of such land," and contains the agreement on the part of the Minister "that in every case where any land comprised within any of the "claims hereinbefore mentioned or referred to becomes revested in the Crown
30 "the Minister will execute, or cause to be executed, in favor of the parties of the "the second part, their executors, administrators or assigns a lease of such "land in the same form as the two Indentures of Lease hereinbefore referred "to: provided, that application for such lease shall be made within one "year from the date when the land for which the lease is required became "revested in the Crown, and that the parties of the second part, or their "executors, administrators or assigns shall within such period file in the "Department of the Interior, at Ottawa, a correct and satisfactory plan of "the survey of the said land prepared by a Dominion Land Surveyor," and "an agreement on the part of the lessees that they or their executors, ad-
40 "ministrators or assigns shall and will file in the Department of the Interior, "at Ottawa, a correct survey of the land comprised within any placer mining "or other claim within the tract first herein referred to which revests in the Crown "and for which they make application for a lease and that when the same is "submitted to them for execution they will accept and execute the same."

12. The agreement of the 15th day of January, 1900, in the 17th paragraph of the petition mentioned, after reference to the said Lease No. 9 of

the tract of land therein mentioned, excepting so much thereof as was taken up for certain placer mining claims, contains the same recitals and agreements as are contained in the agreement of the 9th day of January, 1900.

13. The Respondent denies that Schedule "A" to the petition contains a full and correct list of the placer claims therein and in the sixth paragraph of the petition referred to.

14. The Respondent claims and submits that the Suppliant has not and cannot have any right or claim under the said Lease No. 8 or the said Lease No. 9 or under either of said agreements in respect of the land excluded 10 from the area of the lands demised in and by said leases respectively or in respect of any placer claims on any portion of said excluded land, such excluded land not being demised by either of said leases.

15. The Respondent claims and submits that in so far as the claims set forth in the said petition or in the Schedules thereto are in respect of any portions of said excluded land such claims are invalid.

16. With reference to the 18th paragraph of the petition and Schedule "B" therein mentioned the Respondent says that before the date when the closing order became effective, namely, the 6th day of June, 1899, six of the claims mentioned in said Schedule had been staked and recorded, eight 20 had been staked and applications filed with the Gold Commissioner, and that the remaining two claims are creek claims and not within the limits of any of the said demised property.

17. With reference to the 19th paragraph of the petition and Schedule "C" therein mentioned the Respondent says that all the grants in said Schedule mentioned were duly and legally issued and that in no case had there been a reverter to the Crown and an application made under either of said agreements and plan filed within the period of one year therein mentioned.

18. With reference to the 21st paragraph of the petition and Schedule "D" therein mentioned the Respondent says that all the renewals and 30 certificates of work therein mentioned were duly and legally issued, and that if any of said renewals or certificates had not been duly and legally issued and any claims had become revested in the Crown there was not in respect of any such claims an application under either of said agreements and plans filed within the period of one year therein mentioned.

19. With reference to the 22nd paragraph of the petition the Respondent says that there was no intention of the parties to the said agreements other than is expressed therein and as appears therefrom.

20. With reference to the 26th paragraph of the petition the Respondent says that there was no understanding of the parties to the said agreement

other that as is expressed therein or as appears therefrom. The Order in Council of the 8th July, 1898, provides for the keeping of a Record Book by the Mining Recorder containing particulars of every claim, and that such Book shall during office hours be open for public inspection free of charge. The Respondent is not aware of any neglect of duty of any Official. If there was such neglect, which is denied, the Respondent it is submitted is not liable therefor.

21. With reference to the 27th and 28th paragraphs of the petition the Respondent says that the notice therein mentioned was not posted until 10 the 3rd day of June, 1904, and only related to the said agreement of the 9th day of January, 1900, and that said notice was withdrawn on the 10th day of October, 1904.

22. With reference to the 29th paragraph of the petition and Schedule "E" therein mentioned the Respondent says that all the claims therein mentioned were duly and legally re-located and that if any claim had not been re-located there was not an application under either of said agreements in respect of such claims and plan filed within the period of one year therein mentioned.

23. With reference to the 30th and 31st paragraphs of the petition and 20 Schedule "F" therein mentioned the Respondent claims and submits that under the said agreements the claims therein mentioned were not subject to the said agreements or either of them in the case of a second reverter to the Crown after the date of said agreements. If the said claims were subject to the said agreements the Respondent denies that there was any default under said agreements.

24. With reference to the 32nd paragraph of the petition and each of the claims in Schedule "G" therein mentioned the Respondent says that all the claims in said Schedule mentioned with the exception of the Rasmussen claim were duly renewed and were never re-located. The Suppliant made 30 default in applying for the Rasmussen claim under the agreement in question. From records for a few years as to some of the claims in this Schedule mentioned gold to the amount of about $136,000 was taken therefrom. The Respondent has no other information with reference thereto and is not aware as to the amount paid by the Suppliant for the claims.

25. With reference to the 33rd paragraph of the petition the Respondent says that the renewal therein mentioned was granted for good and sufficient reasons which are set out in the Order in Council of the 7th March, 1903. No application was made for the land under the terms of the agreements in question and in no event could the Suppliant have any claim thereto. 40 The Respondent does not admit that the claim is within the Doyle Location.

26. With reference to the 34th paragraph of the petition the Respondent says that the certificate and renewal therein mentioned were granted for

good and sufficient reasons which are set out in the Order in Council of the 6th day of July, 1905. No application was made for the land under the terms of the agreement in question and in no event could the Suppliant have any claim thereto. The Respondent does not admit that the claim is within the Matson Concession.

27. With reference to the 35th, 36th and 37th paragraphs of the petition and Schedules "H" and "I" therein mentioned the Respondent denies that the Suppliant or its predecessors in title were ever entitled to any of the properties therein mentioned and claims that all acts which have been brought 10 into question were duly and regularly done.

28. With reference to the allegations contained in the 39th, 40th and 41st paragraphs of the petition the Respondent says that there was nothing in the contemplation of the Department of the Interior with regard to water supply at the time when the leases in question were executed, other than as is expressed by and contained in the said leases. The 13th paragraph of said lease is as follows:

> "13. Provided also that Her Majesty does not in any way warrant "that there shall be a sufficient quantity of water in the said creeks or "river to admit of operations under this lease, and that the lessees
> 20 "shall have no right to compensation should it be found impossible for "that or for any other reason to carry on such operations, it being hereby "declared and agreed that this lease is taken by the lessees entirely at "their own risk."

The application in the said 39th paragraph mentioned was made for water for use on the Doyle Concession only. After due consideration it was decided by the Minister of the Interior as a matter of public policy that the application should not then be granted, and on the 22nd day of January, 1900, the agent of the applicants was duly notified by letter of the decision of the Minister. By inadvertance and without knowledge of this decision 30 a grant was issued at Dawson on the 5th March, 1900, for use on the Doyle Concession. On the 6th April, 1900, the applicants were notified by letter from the Acting Gold Commissioner of the error in issuing the grant and notified not to make any expenditure on the faith thereof. No expenditure was made, and no loss was occasioned by the issuing of the grant. The Respondent denies that any assurances were given as stated in the said 41st paragraph.

29. The Respondent denies the allegations contained in the 42nd paragraph of the petition.

30. With reference to the 43rd paragraph of the petition the Respondent 40 says that Water Right No. 716 therein mentioned was not appurtenant to either the Matson or Doyle locations and under the terms of the grant could only

be used on the location to which it was appurtenant. The grant was subject to the proviso that a ditch therein mentioned should be completed within four months from the date of the grant. This was not done. The grant was for a period of three years and expired on the 18th March, 1904. It was not capable of assignment for use on another location. On 13th August, 1906, a document was executed purporting to assign this grant to the Suppliant for the expressed consideration of One Dollar. The Respondent does not admit that the sum in the 43rd paragraph mentioned or any sum was paid in consideration of the said assignment.

10 31. With reference to the 44th and 45th paragraphs of the petition the Respondent says that applications were made in August, 1902, and on said applications grants were issued in November, 1902. The Respondent craves leave to refer to the said applications and the said grants for the terms thereof. Any delay in the issue of the said grants was caused by protests against the issuing of the same filed in the Gold Commissioner's Court. The said grants were issued on the faith of the acquiescence of the applicants in the cancellation of the grant inadvertently issued as aforesaid. The application for extension of time in the 45th paragraph mentioned was applied for in case the applicants would be unable to complete the work in question 20 within the time limited. It was received four days before the time for completion and while the said application was under consideration the work was completed and within the required time.

32. With reference to the remaining paragraphs in the statement of claim the Respondent denies the allegations therein made and craves leave to refer at the trial hereof to the applications, water grants, Orders in Council and Orders therein mentioned. The said water grants under the terms thereof and under the terms of the Orders in Council under which they were issued restricted the user of water thereunder to the Doyle and Matson locations. Notwithstanding such restrictions the Suppliant has used and continues 30 to use the said water on ground not embraced in said locations without interference or interruption and has not been in any way damnified in respect of the matters alleged.

33. In answer to the whole of the Petition of Right and to each and every paragraph thereof the Respondent says that prior to the 21st May, 1906, the Suppliant had complained to the Minister of the Interior that the working out of the two collateral agreements hereinbefore referred to in respect of applications for the grant to the Suppliant of reverted placer mining locations and the preparation and filing by the Suppliant of plans thereof was unsatisfactory, and that the requirements in the said agreements contained 40 with regard to surveys were unnecessary and unduly burdensome to the Suppliant, and had requested the Minister to cancel the said agreements and to enter into a new agreement dispensing with such surveys and plans and otherwise simplifying and rendering less onerous the requirements necessary to the obtaining by the Suppliant of leases covering such reverted locations,

and on the said 21st May, 1906, in pursuance of such complaint and request by the Suppliant, an Order in Council was duly passed by the Governor General in-Council upon the recommendation of the said Minister, the terms whereof will more fully appear upon its production at the trial hereof, by which among other things it was provided that the said agreements should be cancelled and that such surveys and plans should thereafter be dispensed with, and that the Minister should be, as he thereby was, authorized to enter into a new agreement with the Suppliant embodying the terms of the said Order in Council and providing for the issue to the Suppliant of supplementary
10 leases for such re-verted claims upon the Suppliant's complying with such conditions as it might seem reasonable to impose. The said Order in Council was duly communicated to and assented to by the Suppliant, and it was thereupon agreed by and between the Minister and the Suppliant that the said two collateral agreements should become and be and they thereupon became and were utterly rescinded, null and void. During the negotiations leading up to the passing of the said Order in Council and its assent thereto by the Suppliant none of the pretended claims against the Respondent set up in the Petition of Right were alleged, pretended or even suggested by the Suppliant to exist, and no reservation of any alleged or pretended
20 right in respect thereof was made or suggested when the said two collateral agreements became and were rescinded, null and void as aforesaid, nor was any intimation given by the Suppliant that he had any intention to put forward or assert any such alleged or pretended right. The Minister in recommending and the Governor-General in passing the said Order in Council, and the Minister in entering into the agreement with the Suppliant thereunder, relied, as the Suppliant well knew, upon the representations express and implied made by the Suppliant in the course of such negotiations, and had no notice or knowledge whatever that any of the claims now put forward were intended to be put forward or asserted, and the said Order in Council
30 never would have been passed cancelling the said two collateral agreements or in any way relaxing their requirements had the Suppliant disclosed the existence of any such claims. Immediately after the passing of the said Order in Council and the acceptance thereof by the Suppliant and the making of the said agreement thereunder, the Minister acting in pursuance and on the faith thereof issued and the Suppliant accepted supplementary leases of about one hundred and eight placer mining locations, to which, but for the said Order in Council and acceptance thereof and agreement thereunder the Suppliant would have had no right whatever, and since hitherto other and further supplementary leases of reverted placer locations have from
40 time to time been issued to the Suppliant in pursuance and on the faith of the said Order in Council and acceptance thereof and agreement thereunder, and the said supplementary leases issued since and in pursuance and on the faith of the said Order in Council and acceptance thereof and agreement thereunder cover placer locations in respect of which the Suppliant is now setting up the pretended claims put forward in the Petition of Right. The Respondent pleads that under the circumstances and for the reasons in this paragraph pleaded the Suppliant ought to be estopped from setting up the said

pretended claims, and to be confined to the relief afforded the Suppliant by the said Order in Council and acceptance thereof and agreement thereunder, all of which relief the Suppliant has since hitherto received and enjoyed and still continues to receive and enjoy as aforesaid.

34. Save as herein expressly admitted the Respondent denies each and every allegation made in each and every paragraph of the Petition of Right.

DELIVERED this 16th day of January, 1909, by George Fergusson Shepley, of the City of Toronto, in the County of York, Solicitor for His Majesty's Attorney-General.

In the Exchequer Court of Canada

IN THE MATTER OF A PETITION OF RIGHT

BETWEEN:

THE BONANZA CREEK GOLD MINING COMPANY, LIMITED,

Suppliant,

AND

HIS MAJESTY, THE KING,

Respondent.

10 Reply and Joinder of Issue of The Bonanza Creek Gold Mining Company, Limited, to the Statement in answer of His Majesty's Attorney-General for the Dominion of Canada, to the Petition of Right of the Suppliant.

1. The Suppliant joins issue upon the said Statement in Answer.

2. In reply to the said Statement in Answer to the said Petition, the Suppliant saith as follows:

3. In and by a certain indenture made on the 16th day of March, 1907, between His Majesty King Edward VII., represented therein by the Minister of the Interior of Canada, and the Suppliant, after reciting two indentures of 20 lease to John Joseph Doyle and others and an indenture of lease to Charles A. Matson and others, referred to in the Petition of Right, the said indenture of the 16th day of March, 1907, recites that the said hydraulic leases and all the interest therein of the said John Joseph Doyle and others and the said Charles A. Matson and others had become vested in the Suppliant, and it is not therefore now open to the Respondent to deny the Suppliant's power to carry on the business of mining in the District of the Yukon, or to acquire any mines, mining claims or mining locations therein, or any estate or interest by way of lease or otherwise in any such mines, mining claims and mining locations; or to deny that the three said leases were assigned to the Suppliant 30 or that the Suppliant had any power to accept an assignment thereof; or to deny that the agreements in the 16th and 17th paragraphs of the Petition mentioned or either of them were ever assigned to the Suppliant or that the Suppliant had power to accept an assignment thereof.

4. During the fiscal year between the 1st July, 1905, and the 30th June, 1906, the Government of the Dominion of Canada through the territorial

administration of the Yukon Territory issued to the Suppliant a license to carry on the business of mining in the said Yukon Territory and accepted and received from the Suppliant a fee of $500 therefor, and it is therefor not now open to the Respondent to deny that the Suppliant has power to carry on the business of mining in the District of the Yukon, or to acquire any mines, mining claims or mining locations therein, or any estate or interest by way of lease or otherwise in any such mines, mining claims and mining locations: or to deny that the Suppliant had any power to accept an assignment of the said three leases or of the said agreements in the 16th and 17th paragraphs
10 of the Petition mentioned.

DELIVERED, this 23rd day of February, 1914, by John H. Moss, of Traders Bank Building, Toronto, Solicitor for Suppliant.

PART II

EXHIBIT No. 1

Letters Patent Incorporating Petitioner

WM. MORTIMER CLARK,

PROVINCE OF ONTARIO.

EDWARD THE SEVENTH, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominion beyond the Seas, King, Defender of the Faith, Emperor of India,

TO ALL TO WHOM THESE PRESENTS SHALL COME—GREETING:

F. R. Latchford, Attorney General.

WHEREAS the Ontario Companies' Act provides that with the exceptions therein mentioned, the Lieutenant-Governor of Our Province of Ontario in Council may by Letters Patent under the Great Seal, create and constitute bodies corporate and politic for any of the purposes or objects to which the Legislative authority of the Legislature of Ontario extends. 10

AND WHEREAS by their petition in that behalf the persons therein mentioned have prayed for a charter constituting them a body corporate and politic for the due carrying out of the undertaking hereinafter set forth.

Recorded 29th December, 1904, as No. 45. John F. C. Ussher, Deputy Registrar.

AND WHEREAS it has been made to appear to the satisfaction of our Lieutenant-Governor-in-Council that the said persons have complied with the conditions precedent to the grant of the desired charter, and that the said undertaking is within the scope of the said Act. 20

NOW THEREFORE KNOW YE that by and with the advice of the Executive Council of Our Province of Ontario and under the authority of the hereinbefore in part recited Statute and of any other power or authority whatsoever is in us vested in THIS BEHALF.

WE DO by these Our Royal Letters Patent hereby create and constitute the persons hereinafter named, that is to say, John Payne, Accountant; Richard Credicott and William Gilchrist, Bookkeepers; Alexander Foster, Law Student; and Thomas Taylor, Law Clerk, all of the City of Toronto, in the County of York and Province of Ontario, and any others who have become subscribers to the Memorandum of Agreement of the Company and their successors, respectively, a Corporation for the purpose and objects following, that is to say: 30

(a) To carry on either as principal agent, contractor, trustee, or otherwise, and either alone or jointly with others, the businesses of mining and exploration in all their branches and

(b) To apply for, purchase, lease, or otherwise acquire patents and patent rights, trade marks, improvements, inventions, and processes and to exercise, develop and grant licenses with respect thereto and for said purposes.

(1) To construct, maintain and operate buildings, machinery, engines, cars, docks, bridges, elevators, canals and other waterways and other works.

(2) To acquire by purchase, lease or otherwise, and upon such terms and conditions as may be agreed upon real and personal property and estates and interests therein, including mines, mining claims, mining locations, quarries, wells, water powers, lakes, reservoirs, ponds, streams and water courses.

10 (3). To acquire by lease purchase or otherwise and upon such terms and conditions as may be agreed upon rights, powers, concessions, privileges, and franchises to enable the Company properly to exercise and carry on all or any of the rights, powers, concessions, privileges, franchises and objects of the Company.

(4). To acquire by purchase subscription or otherwise and to hold and dispose of stocks, bonds, or any other obligations of any Company formed for or then or theretofore engaged in or pursuing any one or more of the kinds of business purposes objects or operations above mentioned, or owing or holding any property of any kind hereinbefore described, or of any corpora-
20 tion owning or holding stocks or obligations of any such Corporation.

(5). To enter into any arrangement for sharing profits union of interests or co-partnership with any person or company carrying on or about to carry on any business or transaction which may be of benefit to the Company hereby incorporated.

(6). To hold for investment or otherwise to use sell or dispose of and to guarantee any stocks bonds or other obligations of any other corporation with which the Company hereby incorporated may have business relations.

(7). To aid in any manner any corporation whose stocks, bonds or other obligations are held or are in any way guaranteed by the Company and while
30 owner of any such stocks bonds or other obligations to exercise all the rights powers and privileges of ownership thereof, and to exercise any and all voting power thereon.

(8). To acquire and carry on all or any part of the works property franchises and to undertake any liabilities of any person firm association or company engaged in or pursuing any one or more of the kinds of business purposes objects or operations above indicated or possessed of property suitable for the business purposes of the company hereby incorporated, and as the consideration of the same to pay cash or to issue any shares stock debentures bonds or obligations of the company hereby incorporated.

(9). To sell assign transfer and convey to any person or corporations having power to acquire the same and on such terms and conditions and for such considerations as may be agreed on all from time to time any of the works undertakings real and personal properties rights powers concessions and privileges of the company, and

(10). To do all acts and exercise all powers and carry on all business incidental to the due carrying out of the objects for which the company is incorporated, and necessary to enable the company to profitably carry on all or any of its undertakings.

10 The Corporate name of the Company to be BONANZA CREEK GOLD MINING COMPANY, LIMITED.

The share capital of the Company to be one million seven hundred and fifty thousand dollars, divided into three hundred and fifty thousand shares of five dollars each.

The Head Office of the Company to be at the said City of Toronto, and

The provisional directors of the Company to be John Payne, Richard Credicott, Alexander Foster, William Gilchrist and Thomas Taylor hereinbefore mentioned.

AND WE HEREBY AUTHORIZE the Company to hold its meetings without 20 the Province of Ontario.

IN TESTIMONY WHEREOF WE have caused these our Letters to be made Patent, and the Great Seal of Our Province of Ontario to be hereunto affixed.

WITNESS His Honour William Mortimer Clark, etc., etc., Lieutenant-Governor of Our Province of Ontario. At Our Government House in Our City of Toronto, in Our said Province, this twenty-third day of December in the year of our Lord One Thousand Nine Hundred and Four, and in the Fourth year of Our Reign.

BY COMMAND:

"THOMAS MULVEY"

30 *Assistant Provincial Secretary.*

(COPY)

EXHIBIT No. 2

Three Leases and Two Collateral Agreements

Lease No. 2.
File No............................

THIS INDENTURE made, in duplicate, the tenth day of June, in the year of our Lord one thousand eight hundred and ninety-nine,

BETWEEN:

HER MAJESTY, QUEEN VICTORIA, represented herein by the
10 Minister of the Interior, of Canada, hereinafter called "the Minister,"
of the First Part,

AND

JOHN JOSEPH DOYLE, ROBERT LEE, ANDREW OLSEN, JOHN ZARNOWSKY, A. H. GRIFFIN, PERRY J. BALDWIN, DAVID E. GRIFFITH, AND EMIL WEINHEIM, all of Dawson City in the Yukon Territory, and Dominion of Canada, Miners, hereinafter called "the lessees,"
of the Second Part.

WHEREAS prior to the date of these presents, the lessee made application
20 to the Minister for the exclusive right and privilege of taking and extracting by hydraulic or other mining process, all royal or precious metals or minerals from, in, under or upon that certain tract of lands situate and being in the Yukon Territory, in the Dominion of Canada, hereinafter particularly mentioned and described,

AND WHEREAS it has been decided that it is desirable to introduce hydraulic mining into the said Yukon Territory and that before the lessee would be warranted in making the large expenditure of money necessary to the proposed undertaking, he is entitled to have secured to him, his executors, administrators and assigns, the exclusive right of extracting and tak-
30 ing for his own use and benefit, all royal or precious metals from, in, under or upon the said tract of lands.

AND WHEREAS by an Order of the Governor-General-in-Council, bearing date the third day of December in the year of our Lord one thousand eight hundred and ninety-eight, the issue of a lease to the lessee for the said tract of lands has been authorized, upon and subject to the terms, covenants, provisoes, exceptions, restrictions and conditions hereinafter mentioned.

NOW THIS INDENTURE WITNESSETH that in pursuance of the premises and in consideration of and subject to the rent, covenants, provisoes, excep-

tions, restrictions and conditions hereinafter reserved and contained, and by the lessee to be paid, observed and performed, Her Majesty doth grant, demise and lease unto the lessee the said tract of lands and the exclusive right and privilege of extracting and taking therefrom, by hydraulic or other mining process all royal or precious metals, or minerals, from, in, under or upon the tract of lands hereby demised and leased with regard to which the said rights and privileges are hereby granted, which said tract is described as follows, that is to say:

All that certain parcel or tract of lands situate lying and being in the 10 Klondike Mining Division of the said Yukon Territory, on the west side of Bonanza Creek between Boulder Creek and Fox Gulch in rear of and adjoining the Bench Mining Claims on or in rear of the said Bonanza Creek, the said tract of lands or hydraulic mining claim hereby demised and leased or intended so to be having a frontage of fifty-five (55) chains, or thereabouts on general bearing of the said Bonanza Creek opposite the said tract of lands or hydraulic mining claim which said tract or claim contains an area of two hundred and thirteen (213) acres, more or less, and is more particularly shown on a plan of survey thereof, signed by R. J. Jephson, D.L.S., dated the 25th day of March, A.D. 1899, and of record in the Department of the Interior at Ottawa.

20 To Have and To Hold the said demised premises for and during the term of twenty years, to be computed from the day of the date of these presents and from thenceforth next ensuing and fully to be complete and ended.

Yielding and Paying Therefor yearly and every year during the said term unto Her Majesty, Her Successors or Assigns, the yearly rental or sum of one hundred and fifty dollars payable in advance on the anniversary of the date of these presents in each and every year of the said term, that is to say, on the tenth day of June in each year thereof, the first year's rent having already been paid, and the second year's rent being due and payable on the tenth day of June next.

30 Provided always, and this lease is subject to the following exemptions, restrictions, provisoes and conditions, that is to say:

(The Exemptions, restrictions, provisoes and conditions are not printed, not being material to this appeal.)

(The covenant by the lessee to pay rent and observe conditions, etc., etc., is not printed, not being material to this appeal.)

(The agreement for renewal is not printed, not being material to this appeal.)

In Witness Whereof, the said Minister of the Interior of Canada, by his Deputy, James Allan Smart, of the said City of Ottawa, Esquire, has

hereunto set his hand and affixed the seal of the Department; and the lessee has hereunto set his hand and seal.

SIGNED, SEALED AND DELIVERED by the said the Honourable the Minister of the Interior of Canada, by his Deputy, James Allan Smart, in the presence of "J. LORN McDOUGALL, JR."

"JAS. A. SMART," (Seal)
Deputy Minister of the Interior.

And by the said Lessees in the presence of
"J. LORN McDOUGALL, JR."

"JOHN J. DOYLE," (Seal)
"ROBERT LEE," (Seal)
by his attorney, John J. Doyle.
"ANDREW OLSON," (Seal)
by his attorney, John J. Doyle.
"JOHN ZARNOWSKY," (Seal)
by his attorney, John J. Doyle.
"A. H. GRIFFIN," (Seal)
by his attorney, John J. Doyle.
"PERRY J. BALDWIN," (Seal)
by his attorney, John J. Doyle.
"DAVID E. GRIFFITH," (Seal)
by his attorney, John J. Doyle.
"EMIL WEINHEIM," (Seal)
by his attorney, John J. Doyle.

(COPY)

Lease No. 8.
File No. 64963.

THIS INDENTURE made, in duplicate, the fifth day of January, in the year of our Lord one thousand, nine hundred:

BETWEEN

HER MAJESTY, QUEEN VICTORIA, represented herein by the Minister of the Interior of Canada, hereinafter called "the Minister,"
of the First Part,

10 AND

JOHN JOSEPH DOYLE, ROBERT LEE, ANDREW OLSEN, JOHN ZARNOWSKY, A. H. GRIFFIN, PERRY J. BALDWIN, DAVID E. GRIFFITH and EMIL WEINHEIM, all of Dawson City, in the Yukon Territory and Dominion of Canada, Miners, hereinafter called "the lessee,"
of the Second Part.

WHEREAS prior to the date of these presents, the lessee made application to the Minister for the exclusive right and privilege of taking and extracting by hydraulic or other mining process, all royal or precious metals or minerals 20 from, in, under or upon that certain tract of lands situate and being in the Yukon Territory, in the Dominion of Canada, hereinafter particularly mentioned and described,

AND WHEREAS it has been decided that it is desirable to introduce hydraulic mining into the said Yukon Territory and that before the lessee would be warranted in making the large expenditure of money necessary to the proposed undertaking, he is entitled to have secured to him, his executors, administrators and assigns, the exclusive right of extracting and taking for his own use and benefit, all royal or precious metals from, in, under or upon the said tract of lands.

30 AND WHEREAS by an Order of the Governor-General-in-Council, bearing date the third day of December, in the year of our Lord one thousand, eight hundred and ninety-eight, the issue of a lease to the lessee for the said tract of lands has been authorized, upon and subject to the terms, covenants, provisoes, exceptions, restrictions and conditions hereinafter mentioned.

NOW THIS INDENTURE WITNESSETH that in pursuance of the premises and in consideration of and subject to the rent, covenants, provisoes, exceptions, restrictions and conditions hereinafter reserved and contained, and by the lessee to be paid, observed and performed, Her Majesty doth grant, de-

mise and lease unto the lessee the said tract of lands and the exclusive right and privilege of extracting and taking therefrom, by hydraulic or other mining process all royal or precious metals, or minerals, from, in, under or upon the tract of lands hereby demised and leased with regard to which the said rights and privileges are hereby granted, which said tract is described as follows, that is to say:

All that certain parcel or tract of land situate, lying and being in the *Klondike Mining Division of the Yukon Territory on the West side of Bonanza* Creek, between Boulder Creek and Fox Gulch, in front of the tract described 10 in Hydraulic Mining Lease No. 2, granted to Mr. J. J. Doyle and associates, and in rear of and adjoining Creek Claims numbered from 25 to 34, both inclusive, below Discovery, having a frontage of sixty chains or thereabouts on the general bearing of the said Bonanza Creek, opposite said parcel or tract of land, excluding from the area of the said tract so much thereof as has been taken up and entered for under the Regulations in that behalf as Placer Mining Claims the entries for which have not been cancelled by the Mining Recorder. The said parcel or tract of land contains an area of 243.72 acres, more or less, and is more particularly shewn on the plan of survey thereof outlined in green on the same, signed by R. J. Jephson, D.L.S., dated the 25th 20 day of March, 1899, and of record in the Timber and Mines Branch of the Department of the Interior under Reference No. 79345.

TO HAVE AND TO HOLD the said demised premises for and during the term of twenty years, to be computed from the day of the date of these presents and from thenceforth next ensuing and fully to be complete and ended.

YIELDING AND PAYING THEREFOR yearly and every year during the said term unto Her Majesty, Her Successors or Assigns, the yearly rental or sum of one hundred and fifty dollars, payable in advance on the anniversary of the date of these presents in each and every year of the said term, that is to say, on the fifth day of January in each year thereof the first year's rent hav- 30 ing already been paid, and the second year's rent being due and payable on the fifth day of January next.

PROVIDED ALWAYS, and this lease is subject to the following exemptions, restrictions, provisoes and conditions, that is to say:

(The exemptions, restrictions, provisoes and conditions are not printed, not being material to this appeal.)

(The covenant by the lessee to pay rent and observe conditions, etc., etc., is not printed, not being material to this appeal.)

(The agreement for renewal is not printed, not being material to this appeal.)

IN WITNESS WHEREOF the said Minister of the Interior of Canada by his Acting Deputy, Thomas Gainsford Rothwell, of the said City of Ottawa, Esquire, has hereunto set his hand and affixed the seal of the Department, and the lessees have hereunto set their hands and seals respectively.

SIGNED, SEALED AND DELIVERED by the said the Honourable the Minister of the Interior of Canada by his Acting Deputy, Thomas Gainsford Rothwell, in the presence of
(Sgd.) BEATRICE BARBER.

(Sgd.) T. G. ROTHWELL, (Seal)
Acting Deputy of the Minister of the Interior.

10

And by the said Lessee, in the presence of
(Sgd.) BEATRICE BARBER.

(Sgd.) JOHN J. DOYLE (Seal)
(Sgd.) ROBERT LEE, (Seal)
by his attorneys, Emil Wein heim and John J. Doyle.
(Sgd.) ANDREW OLSEN, (Seal)
by his attorneys, Emil Weinheim and John J. Doyle.
(Sgd.) JOHN ZARNOWSKY, (Seal)
by his attorneys, Emil Weinheim and John J. Doyle.

20

(Sgd.) A. H. GRIFFIN, (Seal)
by his attorneys, Emil Weinheim and John J. Doyle.
(Sgd.) PERRY J. BALDWIN, (Seal
by his attorneys, Emil Weinheim and John J. Doyle.
(Sgd.) DAVID E. GRIFFITH, (Seal)
by his attorneys, Emil Weinheim and John J. Doyle.
(Sgd.) EMIL WEINHEIM. (Seal)

MEMORANDUM OF AGREEMENT made this Ninth day of January, A.D. 1900, in triplicate.

BETWEEN:

HER MAJESTY, QUEEN VICTORIA, represented herein by the Minister of the Interior of Canada, hereinafter called "the Minister,"

of the First Part,

AND

JOHN J. DOYLE, ROBERT LEE, ANDREW OLSEN, JOHN ZARNOWSKY, A. H. GRIFFIN, PERRY J. BALDWIN, DAVID E. GRIFFITH, AND EMIL WEINHEIM, all Free Miners, in the Yukon Territory, in the Dominion of Canada,

of the Second Part.

WHEREAS the parties of the second part made application upon the 22nd July, 1898, for a lease of a tract of land in the said Yukon Territory, for the purpose of extracting therefrom all minerals, both precious and base, by hydraulic or other mining process.

AND WHEREAS the Minister has leased to the parties of the second part by Indenture of Lease bearing date the 22nd July, A.D. 1898, and 5th January, A.D. 1900, all the said tract of land excepting so much thereof as was taken up for placer mining claims as set forth in the said indenture of lease, respectively.

AND WHEREAS it has been agreed between the Minister and the parties of the second part that if any of the placer mining claims or any mining claims whatever within the said tract of land shall at any time become forfeited to the Crown because of non-compliance by the entrant with the conditions of entry or revert or be surrendered to the Crown for any reason or cause whatsoever the land comprised in such claim or claims shall be leased by the Minister to the parties of the second part on the same conditions as are set forth and contained in the Indentures of Lease hereinbefore referred to upon the understanding however that the parties of the second part shall apply to the Minister for a lease of the land comprised within such claim or claims within one year from the date upon which the same shall be revested in the Crown, and that they shall file in the Department of the Interior at Ottawa a satisfactory plan of such land.

NOW THIS AGREEMENT WITNESSETH that the Minister for himself and his successors in consideration of the premises and of the sum of one dollar now paid to the Minister by the parties of the second part doth promise and agree with them the parties of the second part their executors, administrators and assigns that in every case where any land comprised within any of the claims hereinbefore mentioned or referred to becomes revested

in the Crown the Minister will execute or cause to be executed in favor of the parties of the second part their executors administrators or assigns a lease of such land in the same form as the two indentures of lease hereinbefore referred to: provided that application for such lease shall be made within one year from the date when the land for which the lease is required became revested in the Crown and that the parties of the second part or their executors administrators or assigns shall within such period file in the Department of the Interior at Ottawa a correct and satisfactory plan of the survey of the said land prepared by a Dominion Land Surveyor.

10 AND the parties of the second part for themselves their heirs executors administrators and assigns hereby promise and agree with the Minister that they or their executors administrators or assigns shall and will file in the Department of the Interior at Ottawa a correct survey of the land comprised within any placer mining or other claim within the tract first herein referred to which revests in the Crown and for which they make application for a lease and that when the same is submitted to them for execution they will accept and execute the same.

IN WITNESS WHEREOF the said the Minister of the Interior of Canada by his Deputy James Allan Smart of the said City of Ottawa Esquire has 20 hereunto set his hand and affixed the seal of the Department and the parties of the second part have hereunto set their respective hands and seals.

SIGNED, SEALED AND DELIVERED in Presence of

"BEATRICE BARBER."

"JAS. A. SMART," (Seal)
Deputy of the Minister of the Interior of Canada.

"JOHN J. DOYLE." (Seal)

"ROBERT LEE," (Seal)
by his attorneys Emil Weinheim and John J. Doyle.

"ANDREW OLSEN," (Seal)
30 by his attorneys Emil Weinheim and John J. Doyle.

"JOHN ZARMOWSKY" (Seal)
by his attorneys Emil Weinheim and John J. Doyle.

"A. H. GRIFFIN," (Seal)
by his attorneys, Emil Weinheim and John J. Doyle.

"PERRY J. BALDWIN," (Seal)
by his attorneys Emil Weinheim and John J. Doyle.

40

"DAVID E. GRIFFITH," (Seal)
By his attorneys, Emil Weinheim and John J. Doyle.

"EMIL WEINHEIM." (Seal)

(Copy).

Lease No. 9.
File No. 68733 T. & M.

This Indenture made, in duplicate, the Thirteenth day of January, in the year of our Lord one thousand nine hundred.

Between:

HER MAJESTY, QUEEN VICTORIA, represented herein by the Minister of the Interior of Canada, hereinafter called "the Minister,"
of the First Part,

10 AND

C. A. MATSON, I. FLATOW, THEODORE SCHMIDT, D. J. GRAUMAN and PETER IWESON, all of Dawson City, in the Yukon Territory, Free-Miners, hereinafter called "the lessee,"
of the Second Part.

Whereas prior to the date of these presents, the lessee made application to the Minister for the exclusive right and privilege of taking and extracting by hydraulic or other mining process, all royal or precious metals or minerals from, in, under or upon that certain tract of lands situate and being in the Yukon Territory, in the Dominion of Canada, hereinafter particularly men-
20 tioned and described.

And Whereas it has been decided that it is desirable to introduce hydraulic mining into the said Yukon Territory and that before the lessee would be warranted in making the large expenditure of money necessary to the proposed undertaking, he is entitled to have secured to him, his executors, administrators and assigns, the exclusive right of extracting and taking for his own use and benefit, all royal or precious metals from, in, under or upon the said tract of lands.

And Whereas by an Order of the Governor-General-in-Council, bearing date the third day of December, in the year of our Lord one thousand eight
30 hundred and ninety-eight, the issue of a lease to the lessee for the said tract of lands has been authorized, upon and subject to the terms, covenants, provisoes, exceptions, restrictions and conditions hereinafter mentioned.

Now This Indenture Witnesseth that in pursuance of the premises and in consideration of and subject to the rent, covenants, provisoes, exceptions, restrictions and conditions hereinafter reserved and contained, and by the lessee to be paid, observed and performed, Her Majesty doth grant,

demise and lease unto the lessee the said tract of lands and the exclusive right and privilege of extracting and taking therefrom, by hydraulic or other mining process all royal or precious metals, or minerals, from, in, under or upon the tract of lands hereby demised and leased with regard to which the said rights and privileges are hereby granted, which said tract is described as follows, that is to say:

All that certain parcel or tract of land situate lying and being in the Klondike Mining Division of the Yukon Territory on the West side of Bonanza Creek, between Adams Creek and Fox Gulch, in rear of and adjoin-
10 ing the Creek claims on said Bonanza Creek and having a frontage of one and a half miles (1½ miles) or thereabouts on the general bearing of the said Bonanza Creek opposite the said tract of land excluding from the area of the said tract so much thereof as has been taken up and entered for under the regulations in that behalf as placer mining claims, the entries for which have not been cancelled by the Mining Recorder. The said parcel or tract of land contains an area of 875 acres more or less as shown on plan of survey thereof signed by Lewis Bolton, D.L.S., dated the 20th day of December, A.D. 1899, and of record in the Timber and Mines Branch of the Department of the Interior.

20 TO HAVE AND TO HOLD the said demised premises for and during the term of twenty years, to be computed from the day of the date of these presents and from thenceforth next ensuing and fully to be complete and ended.

YIELDING AND PAYING THEREFORE YEARLY and every year during the said term unto Her Majesty, Her Successors or Assigns, the yearly rental or sum of two hundred and twenty-five dollars, payable in advance on the anniversary of the date of these presents in each and every year of the said term, that is to say, on the thirteenth day of January in each year thereof, the first year's rent having already been paid, and the second year's rent being due and payable on the thirteenth day of January next.

30 PROVIDED always, and this lease is subject to the following exemptions, restrictions, provisoes and conditions, that is to say:

(The exemptions, restrictions, provisoes and conditions are not printed, not being material to this appeal.)

(The covenant by the lessee to pay rent and observe conditions, etc., etc., is not printed, not being material to this appeal.)

(The agreement for renewal is not printed, not being material to this appeal.)

IN WITNESS WHEREOF the said Minister of the Interior of Canada, by his Deputy, James Allan Smart, of the said City of Ottawa, Esquire, has

hereunto set his hand and affixed the seal of the Department; and the lessees have hereunto set their hands and seals respectively.

SIGNED, SEALED AND DELIVERED by the said the Honourable the Minister of the Interior of Canada, by his Deputy, James Allan Smart, in the presence of
(Sgd.) CHRISTO C. ROGERS.

(Sgd.) JAS. A. SMART, (Seal)
Deputy of the Minister of the Interior.

And by the said Lessee in the
10 presence of

(Sgd.) CHRISTO C. ROGERS.

(Sgd.) C. A. MATSON, (Seal)
by his attorney,
J. Lorn McDougall, Jr.

(Sgd.) I. FLATOW, (Seal)
by his attorney,
J. Lorn McDougall, Jr.

(Sgd.) THEODORE SCHMIDT, (Seal)
by his attorney,
J. Lorn McDougall, Jr.

(Sgd.) D. J. GRAUMAN, (Seal)
by his attorney,
20 J. Lorn McDougall, Jr. (Seal)

(Sgd.) PETER IWESON,
by his attorney,
J. Lorn McDougall, Jr.

MEMORANDUM OF AGREEMENT made this Fifteenth day of January, A.D. 1900, in triplicate

BETWEEN:

HER MAJESTY, QUEEN VICTORIA represented herein by the Minister of the Interior of Canada, hereinafter called "the Minister"

of the First Part,

AND

C. A. MATSON, I. FLATOW, THEODORE SCHMIDT, D. I. GRAUMAN AND PETER IWESON, Free Miners, all of Dawson City,
10 in the Yukon Territory, in the Dominion of Canada,

of the Second Part.

WHEREAS the parties of the second part made application upon the 2nd day of November, 1898, for a lease of a tract of land in the said Yukon Territory for the purpose of extracting therefrom all minerals, both precious and base, by hydraulic or other mining process.

AND WHEREAS the Minister has leased to the parties of the second part by indenture of lease bearing date the 13th of January, 1900, all the said tract of land excepting so much thereof as was taken up for placer mining claims as set forth in the said indenture of lease.

20 AND WHEREAS it has been agreed between the Minister and the parties of the second part that if any of the placer mining claims or any mining claims whatever within the said tract of land shall at any time become forfeited to the Crown because of non-compliance by the entrant with the conditions of entry or revert or be surrendered to the Crown for any reason or cause whatsoever the land comprised in such claim or claims shall be leased by the Minister to the parties of the second part on the same conditions as are set forth and contained in the indenture of lease hereinbefore referred to upon the understanding, however, that the parties of the second part shall apply to the Minister for a lease of the land comprised within such claim or claims
30 within one year from the date upon which the same shall be revested in the Crown, and that they shall file in the Department of the Interior at Ottawa a satisfactory plan of such land.

NOW THIS AGREEMENT WITNESSETH that the Minister for himself and his successors in consideration of the premises and of the sum of one dollar now paid to the Minister by the parties of the second part doth promise and agree with them the parties of the second part their executors, administrators and assigns that in every case where any land comprised within any of the claims hereinbefore mentioned or referred to becomes revested in the Crown the Minister will execute or cause to be executed in favor of the parties of the second part their executors administrators or assigns a lease

of such land in the same form as the indenture of lease hereinbefore referred to: provided that application for such lease shall be made within one year from the date when the land for which the lease is required became revested in the Crown and that the parties of the second part or their executors administrators or assigns shall within such period file in the Department of the Interior at Ottawa a correct and satisfactory plan of the survey of the said land prepared by a Dominion Land Surveyor.

AND the parties of the second part for themselves, their heirs executors administrators and assigns hereby promise and agree with the Minister 10 that they or their executors administrators or assigns shall and will file in the Department of the Interior at Ottawa a correct survey of the land comprised within any placer mining or other claim within the tract first herein referred to which revests in the Crown and for which they make application for a lease and that when the same is submitted to them for execution they will accept and execute the same.

IN WITNESS WHEREOF the said the Minister of the Interior of Canada by his Deputy James Allan Smart of the said City of Ottawa Esquire has hereunto set his hand and affixed the seal of the Department and the parties of the second part have hereunto set their respective hands and seals.

20 SIGNED, SEALED AND DELIVERED in presence of
"CHRISTO. C. ROGERS."

"JAS. A. SMART," (Seal)
Deputy of the Minister of the Interior.
"C. A. MATSON," (Seal)
by his attorney,
J. Lorn McDougall, Jr.
"I. FLATOW," (Seal)
by his attorney,
J. Lorn McDougall, Jr.
"THEODORE SCHMIDT," (Seal)
30 by his attorney,
J. Lorn McDougall, Jr.
"D. I. GRAUMANN," (Seal)
by his attorney,
J. Lorn McDougall, Jr.
"PETER IWESON," (Seal)
by his attorney,
J. Lorn McDougall, Jr.

EXHIBIT No. 3

Lease of Reverted Claims Dated March 16, 1907

THIS INDENTURE made, in duplicate, the Sixteenth day of March, one thousand nine hundred and seven.

BETWEEN:

HIS MAJESTY, KING EDWARD VII, represented herein by the Minister of the Interior of Canada, hereinafter called "the Minister,"
of the First Part,

AND

10 THE BONANZA CREEK GOLD MINING COMPANY, LIMITED, a body corporate and politic duly incorporated under the laws of the Province of Ontario, hereinafter called "the lessees,"
of the Second Part.

WHEREAS in any by two certain Indentures of lease bearing date respectively the Tenth day of June, one thousand eight hundred and ninety-nine, and the Fifth of January, one thousand nine hundred, and known as hydraulic mining leases Numbers 2 and 8, Her late Majesty, Queen Victoria, granted, demised and leased unto John Joseph Doyle and others, as a hydraulic mining location a certain tract of land lying between Boulder Creek and Fox Gulch, 20 and by another Indenture bearing date the Thirteenth day of January, one thousand nine hundred, known as hydraulic lease Number 9, Her said late Majesty granted, demised and leased unto Charles A. Matson and others as a hydraulic mining location a certain other tract of land lying between Fox Gulch and Adam's Creek, both such locations being on the left limit of Bonanza Creek, in the Yukon Territory.

AND WHEREAS the said hydraulic leases and all the interests therein of the said John Joseph Doyle and others and the said Charles A. Matson and others have become vested in the lessees.

AND WHEREAS at the time of the issue of the said leases the said hydraulic 30 mining locations respectively included within their boundaries, placer mining claims for which entries had been granted and which were in good standing and under the terms of the said leases such claims were excepted from the premises thereby respectively demised although lying within the boundaries of the said locations.

AND WHEREAS since the dates of such issue other placer mining claims have been located within the said boundaries.

AND WHEREAS by Order of 21st May, 1906, the Governor-General-in-Council has provided both by way of Regulation under the Dominion Lands Act

and by way of Ordinance under the Yukon Territory Act that all placer mining claims within the limits of the hydraulic mining locations hereinabove described which may be so abandoned or forfeited or in connection with which the rights of the former owners thereof have expired should not be open to entry under the provisions of the regulations governing placer mining in the Yukon Territory but should be permitted to revert to the Crown; and has authorized the Minister to enter into an agreement with the lessees for the issue to them of supplementary leases for such reverted claims upon their complying with such conditions as it may seem reasonable to impose.

10 AND WHEREAS the placer mining claims enumerated and described in the schedule to these presents have been abandoned or otherwise forfeited, or the rights of the owners thereof have expired and others of such claims are likely to revert to the Crown under the provisions of the said Order in Council during the pendency of the terms granted by the said leases respectively.

NOW THIS INDENTURE WITNESSETH that in consideration of the premises His Majesty doth grant, demise and lease unto the lessees, their successors and assigns the lands comprised in the said placer mining claims enumerated and described in the schedule to these presents, together with the exclusive right and privilege of extracting and taking therefrom by hydraulic or other 20 mining process all royal or precious metals or minerals from, in, under or upon the said lands.

TO HAVE AND TO HOLD the said demised premises unto the lessees, their successors and assigns, for and during the remainder of the term of years respectively for which the hydraulic mining locations within which the said claims are respectively situate. Yielding and paying therefore yearly and every year during the said respective terms unto His Majesty, His Successors and Assigns, the yearly rental or sum of one dollar payable in advance on the Sixteenth day of March in each year, the first year's rent having already been duly paid. The demise hereby granted is in respect of each of the said 30 claims subject to the terms, restrictions, provisoes and conditions contained in the lease of the hydraulic mining location in which such claim is situated, in the same way and to the same extent as if the land comprised in such claim had originally formed part of such location.

AND THIS INDENTURE FURTHER WITNESSETH that His Majesty, in consideration of the premises and of the sum of one dollar now paid to the Minister by the lessees for His Majesty's use, the receipt whereof is hereby acknowledged, doth hereby promise and agree to and with the lessees, their successors and assigns, that in every case where any land comprised within any of the placer mining claims situated within the boundaries of any one of 40 the said hydraulic mining locations becomes revested in the Crown, His Majesty will grant to the lessees, their successors and assigns, a lease of such land in the same form or to the same effect as the demise hereinbefore contained.

AND IT IS HEREBY FURTHER AGREED that the lands comprised in claims hereafter reverting to the Crown may be so leased by a simple memorandum signed by the Minister or Deputy Minister of the Interior describing such claims and stating that the lands comprised therein are thereby incorporated in and shall form part of hydraulic mining location.

IN WITNESS WHEREOF the Minister of the Interior of Canada, by his Deputy, William Wallace Cory, of the City of Ottawa, Esquire, has hereunto set his hand and affixed the Seal of the Department of the Interior, and these presents have been duly executed by or on behalf of the lessees.

10 SIGNED, SEALED AND DELIVERED by the said the Honorable the Minister of the Interior of Canada, by his Deputy, William Wallace Cory, in the presence of
(Sgd.) F. CHASE CAPRÉOL.

(Sgd.) W. W. CORY,
Deputy of the Minister of the Interior of Canada.
(Seal)

And by the said Lessee, in the presence of
F. J. Bowen,
as. to A.K.H.
20 F. S. Berry,
for H.T.W.

BONANZA CREEK GOLD MINING CO., LTD.,
(Sgd.) HENRY T. WHITIN,
President.
(Sgd.) ARTHUR K. HUTCHINS,
Secretary.
{ Corporate Seal }

NOTE.—The Schedules to this agreement are not printed, as they are not material in this appeal.

(COPY)

EXHIBIT No. 4

Auditor-General's Coupon and Form of Free Miner's Certificate

No. 464.

(Coupon for Auditor-General)

DOMINION OF CANADA

FREE MINER'S CERTIFICATE

Place of Issue..................Ottawa.
Date of Issue....................24th Dec., 1904
10 Issued by..........................G. W. Ryley.
Issued to..........................The Bonanza Creek Gold Mining Co., Limited
Amount paid....................$100.00.
Agent's Signature............G. M. Ryley.
Payer's Signature............

(COPY)

No. 7504.

"Renewal 464"

11,254 $67.00
5.00

20 (Coupon for Auditor-General)

DOMINION OF CANADA

FREE MINER'S CERTIFICATE

Place of Issue..................Ottawa
Date of Issue...................26th January, 1906.
Issued by..........................R. H. Campbell.
Issued to..........................The Bonanza Creek Gold Mining Co.
Amount paid....................$72.00.
Agent's Signature............
Payer's Signature............

30 "From 25th December, 1905, to the 30th June, 1906."

(Copy)

DATE OF ISSUE............26th January, 1906.

No. 7504

"Renewal 464"

DOMINION OF CANADA

FREE MINER'S CERTIFICATE

Place of Issue...... Ottawa. Valid for one year only.

Non-Transferable

This Is To Certify that The Bonanza Creek Gold Mining Co., of 10 Dawson, Yukon Territory, has paid me this day the sum of Seventy-two dollars and is entitled to all the rights and privileges of a FREE MINER, under any Mining Regulations of the Government of Canada, from the 24th day of December, 1905, to the 30th June, 1906.

This Certificate shall also grant to the holder thereof the privilege of Fishing and Shooting, subject to the provisions of any Act which has been passed, or which may hereafter be passed for the protection of game and fish; also the privilege of Cutting Timber for actual necessities, for building houses, boats and for general mining operations; such timber, however, to be for the exclusive use of the miner himself, but such permission shall not 20 extend to timber which may have been heretofore or which may hereafter be granted to other persons or corporations.

Countersigned
"R. H. Campbell."

"W. W. Cory,"
Deputy of the Minister of the Interior.

To be Countersigned by the Gold Commissioner, Mining Recorder, or by an Officer or Agent of the Department of Interior.

EXHIBIT No. 5

M.R.H. (COPY)

EXTRACT FROM CASH RETURN OF J. T. LITHGOW

TERRITORIAL TREASURER AND COMPTROLLER

YUKON TERRITORY

1905				
Sept.....	7	Receipt No. 1447	C. B. Burns, Territorial Secretary, Incorporation Fees of Bonanza Creek Gold Mining Company, Limited....	$500.00
			Certified Correct,	
			"W. P. BATTERTON."	

10

EXHIBIT No. 6

Form of Certificate Issued to Petitioner Company Enabling it to Carry on Business in Yukon Territory

CANADA
YUKON TERRITORY

LICENSE

TO THE BONANZA CREEK GOLD MINING COMPANY, LIMITED

AUTHORIZING IT TO DO BUSINESS IN THE YUKON TERRITORY

WHEREAS the Bonanza Creek Gold Mining Company, Limited, has petitioned the Commissioner of the Yukon Territory for a license to carry on its business within the Yukon Territory.

AND WHEREAS the said Company has deposited with the Territorial Secretary, a certified copy of the Memorandum and Articles of Association of the said Company, whereby it appears that the said Company is duly incorporated under the Laws of the Province of Ontario, one of the Provinces of the Dominion of Canada, for the purposes and objects therein set out;

AND WHEREAS the Company has deposited with the Territorial Secretary a Power of Attorney empowering Emil Weinheim of the City of Dawson, Yukon Territory, to accept service of process and to receive all notices and to do all acts, and to execute all deeds and other instruments relating to the matters within the scope of said power;

NOW, THEREFORE, BE IT KNOWN, That in pursuance of the Ordinance, being Chapter 59 of the Consolidated Ordinances of the Yukon Territory;

I, WILLIAM WALLACE BURNS MCINNES, Commissioner of the Yukon Territory, by and with the advice and consent of the Council of said Territory, do hereby authorize and license the Bonanza Creek Gold Mining Company, Limited, to use, exercise and enjoy within the Yukon Territory, all such powers, privileges and rights set out in their Memorandum of Association as are within the power of the Commissioner of the Yukon Territory in Council to authorize and license, and to carry on within the Yukon Territory all such objects of their incorporation.

WITNESS my hand and the Seal of the Yukon Territory at Dawson, in said Territory, this Seventh day of September, in the Year of Our Lord One Thousand Nine Hundred and Five.

(Sgd.) W. W. B. MCINNES,
Commissioner.

Attest: (Sgd.) C. B. BURNS,
Territorial Secretary.

EXHIBIT A

See foot-note of Exhibit B.

EXHIBIT B.

In the Exchequer Court of Canada

BONANZA CREEK GOLD MINING CO. *v.* THE KING

Paper of Admissions

(1). The suppliant company obtained what purport to be free miners' certificates ~~under 61 Vic. Cap. 49 (Can.)~~ from the date of its incorporation down to a period at which such certificates ceased to be required.

(2). The suppliant company has done no business in the Province of Ontario beyond having its head office and the holding of certain meetings there.

(3). The suppliant paid to the Secretary of the Yukon Territorial Council a fee of $500 and a license under the Yukon Ordinance (Cap. 59 C Ordinances of Yukon Territory, 1902) to carry on business in the Yukon was thereupon assumed to be granted to the suppliant company.

(4). The free miners' certificates under paragraph 1 hereof are in the following form.

(5). The Yukon license purported to be granted under paragraph 3 hereof was in the following form.

(6). No license under s. 1. of 61 Vic. Cap. 49 Can. was ever granted by the Secretary of State to the suppliant company.

(See regulations 18th Jan., 1899, and of March, 1901.)

NOTE.—The regulations of 18th January, 1898, referred to in the above Exhibit "B" appear in the Orders in Council printed with the Statutes of Canada 61 Victoria at pages XXXIX to XLVII inclusive.

The regulations of March, 1901, referred to in said Exhibit B appear in the Orders in Council printed with the Statutes of Canada I Edward VII at pages XLIX to LXII, inclusive.

PART III

In the Exchequer Court of Canada

ORDER OF MR. JUSTICE CASSELS

WEDNESDAY, THE 4TH DAY OF JUNE, A.D. 1913.

PRESENT:

THE HONOURABLE MR. JUSTICE CASSELS.

BETWEEN:

THE BONANZA CREEK GOLD MINING COMPANY, LIMITED,
Suppliant,

10 AND

HIS MAJESTY, THE KING,
Respondent.

UPON APPLICATION made unto this Court this day by Mr. Geo. F. Shepley, K.C., of Counsel for the Respondent, in the presence of Mr. J. H. Moss, K.C., of Counsel for the Suppliant, for an order directing certain questions of law raised upon the pleadings herein to be argued before the trial of the Petition of Right herein.

1. IT IS ORDERED that all questions of law which are raised by the pleadings herein be argued and disposed of before the trial of the Petition of Right, 20 and that such Argument take place before this Court at Ottawa, on the Sixteenth day of September, A.D. 1913, at 11 o'clock a.m.

2. AND IT IS FURTHER ORDERED that all such admissions of fact as may be made for the purpose of raising any such questions of law be taken to be for the purposes of the said argument of questions of law only.

3. AND IT IS FURTHER ORDERED that the Respondent do, on or before the first day of August, 1913, serve upon the Suppliant a statement of such questions of law as the Respondent intends to submit as falling within the terms of the direction hereby given.

4. AND IT IS FURTHER ORDERED that the costs of this motion be costs 30 in the cause.

By the Court,
(Sgd.) CHAS. MORSE,
Registrar.

Certified a true copy,
(Sgd.) CHAS. MORSE,
Registrar.

In the Exchequer Court of Canada

ORDER OF MR. JUSTICE CASSELS

SATURDAY, THE 14TH DAY OF MARCH, A.D. 1914.

PRESENT:

THE HONOURABLE MR. JUSTICE CASSELS.

IN THE MATTER OF THE PETITION OF RIGHT OF:

THE BONANZA CREEK GOLD MINING COMPANY, LIMITED,
Suppliant,

[SEAL] AND

10 HIS MAJESTY, THE KING,
Respondent.

UPON the application of Counsel for the Respondent in presence of Counsel for the Suppliant, and upon hearing read the Petition of Right, Statement in Answer and Reply herein, and upon hearing what was alleged, and Counsel aforesaid agreeing to make such admissions of fact and to admit such documents as may be necessary to raise the questions of law hereinafter referred to, and it appearing to this Court that it is convenient to have such questions of law decided upon the pleadings and upon such admissions and documents before any evidence is given or any other question, whether of fact or of law, 20 is tried.

THIS COURT DOTH ORDER that the questions of law set up by the Respondent in paragraphs one and two of the Answer of the Respondent to the said Petition of Right and such questions of fact as may be necessary to the determination of the same, be raised, heard and determined upon the said Petition of Right, Answer and Reply, and upon the said admissions and documents, and that pending the final determination of such questions, all other proceedings herein be stayed.

AND THIS COURT DOTH FURTHER ORDER that the costs of this motion be costs in the cause.

30 By the Court,
(Sgd.) CHAS. MORSE,
Registrar.

Certified a true copy.
CHAS. MORSE,
Registrar.

In the Exchequer Court of Canada

BETWEEN:

THE BONANZA CREEK GOLD MINING COMPANY, LIMITED,
Suppliant.

AND

No. 1744

HIS MAJESTY, THE KING,
Respondent.

REASONS FOR JUDGMENT OF MR. JUSTICE CASSELS

10 CASSELS, J.

Judgment delivered, April 28, 1914.

The Petition of Right in this case was filed on the 6th April, 1908. For various reasons no steps were taken to have the case disposed of until the parties came before me on the 19th September last.

The petitioners are a company incorporated under The Ontario Companies Act, their charter bearing date the 23rd day of December, 1904. By the charter the corporate name of the company is the Bonanza Creek Gold Mining Company, Limited, and they are empowered to carry on either as principal, agent, contractor, trustee, or otherwise, and either alone or jointly 20 with others, the business of mining and exploration in all their branches; and to apply for, purchase, lease, or otherwise acquire patents or patent rights, etc. There is no limitations by their charter as it reads limiting the company's capacity to carry on business outside of Ontario; neither is there any express authority conferred by the charter authorizing them to carry on business outside. The business carried on by the Company is that of mining in the Yukon Territory.

The Crown by their defence plead as follows:

"1. The Respondent denies that the Suppliant has now or ever has had "the power either under Letters Patent, license, free miner's certificates, 30 "or otherwise, to carry on the business of mining in the District of the Yukon, "or to acquire any mines, mining claims, or mining locations therein, or any "estate or interest by way of lease or otherwise in any such mines, mining "claims or locations."

"2. Should a free miner's certificate have been issued to the suppliant "the respondent claims that the same is and always has been invalid and "of no force or effect—that there was no power to issue a free miner's certifi- "cate to the Suppliant, a Company incorporated under Provincial Letters "Patent, and that there was no power vested in the suppliant to accept "such a certificate."

40 The Suppliant filed a reply, in effect setting up a plea of estoppel against the Crown raising these defences.

When counsel appeared before me on the 19th September referred to, it was conceded by the counsel for suppliant and the counsel for the Crown, that the question of the capacity of the petitioners to enter into the business in question in the Yukon Territory, should be first disposed of. The trial of the case will necessarily involve very much expense. It was thought by the counsel that it would be proper to have this question determined before entering upon a costly trial which might prove abortive.

At this date, namely, the 19th September, what is known as the *Companies Case* was standing for judgment before the Supreme Court of Canada. 10 It was suggested that it would be advisable to defer any argument in the present case until after the reasons for judgment of the Judges of the Supreme Court were given. I am not sure that technically I am bound by these reasons, but I have too much respect for the opinions of the Appellate Court not to follow their views no matter what my own opinion might be on the question. It is therefore suggested that under the practice laid down by the Orders of the Exchequer Court, an order should be made directing the argument of the legal questions raised by the 1st and 2nd paragraphs of the defence and await the result of the decision on this question before proceeding to trial, if it be ultimately held that the petitioners had the right claimed to 20 enter into the mining business in the Yukon Territory.

The opinions of the learned Judges in the Supreme Court were delivered on the 14th October, 1913, as reported in 48 S.C.R. at p. 331.

The case came on before me again on Saturday, the 14th March last,—the petitioners were represented by Messrs. Hellmuth, K.C., and Moss, K.C. —the Crown by Messrs. Shepley, K.C., and Mason. Certain admissions of fact and documents were agreed to by Counsel and the case was argued.

The opinions of the Chief Justice of the Supreme Court, of Sir Louis Davies and Mr. Justice Duff, are to my mind clear against the right of the suppliant company. The learned Chief Justice points out that

30 "the Parliament of Canada can alone constitute a corporation with "capacity to carry on its business in more than one Province. Com-"panies incorporated by local legislatures are limited in their operations "to the territorial area over which the incorporating legislature has "jurisdiction. Comity cannot enlarge the capacity of a company where "the capacity is deficient by reason of the limitations of its charter or of "the constituting power."

The opinion of Mr. Justice Davies is equally strong against the capacity of a company, such as that of the petitioners, embarking upon the mining business in the Yukon Territory and so is the opinion of Mr. Justice Duff.

40 The opinions of Idington, J., and Brodeur, J., are the other way.

As I read the judgment of Mr. Justice Anglin, I would infer from it that his view would also be that a company incorporated by a Province for the purpose of mining would be confined to the exercise of its main functions to the Province incorporating it. He does state that he finds nothing in the language of Clause 11 of Section 92, of the British North America Act, which

compels us to hold that the ordinary mercantile trading or manufacturing company, incorporated by a Province to do business without

> "territorial limitation is precluded from availing itself of the so-called "comity of a foreign state, or of a province, which recognizes the exist- "ence of foreign corporations and permits their operations in its territory."

From this it would appear that the learned Judge is dealing with the case of ordinary mercantile trading and manufacturing companies. I would not infer from his reasons that his view would be that where the business of the company is that of a mining company, such a company would have the 10 capacity to carry on its mining business, namely, that of mining in a foreign country.

The second question submitted for the opinions of the Court is as follows:

> "Has a company incorporated by a provincial legislature under the "powers conferred in that behalf by Section 92, Article 11, of the British "North America Act, 1867, power or capacity to do business outside of "the limits of the incorporating province? If so, to what extent and for "what purpose?"

The answer of Mr. Justice Anglin is as follows:

> "Yes—subject to the general law of the state or province in which it 20 "seeks to operate and to the limitations imposed by its own constitution, "but not by virtue of (the powers conferred by its) provincial incor- "poration."

If this answer is taken by itself, I infer from it that the learned Judge was of opinion that the capacity of the incorporation was limited to the province in which the business was being carried on, as he limits his answer by the words "but not by virtue of (the powers conferred by its) provincial "incorporation."

It seems to me that on this state of facts, the proper course for me to pursue is to give effect to the opinion of the learned Judges in the Supreme 30 Court. The question at issue is one of great moment to a large number of companies. It is a question that must be finally decided by the Privy Council in order that the law should be settled definitely once and for all. This can be attained by an appeal from my judgment dismissing this petition. I wish it to be clearly understood, that I am following as I conceive it my duty to do, the reasons of the learned Judges of the Supreme Court, as I understand them, and am not expressing any opinion of my own on this important question. It may turn out later that the real question is not one of capacity, but that it is a matter of internal regulation as between the shareholders of the company and their directors. In the case of a trustee, a trustee if recog- 40 nized by a foreign country, could enter into contracts in a foreign state, and as between the trustee and the party with whom he contracts the contract

would be valid and enforceable. Nevertheless, the trustee might be restrained by the *cestui qui trustent,* from imperilling the trust funds by investments beyond the state in which the trust is to be administered. And so it may be that while the incorporation created by a province is brought into being with full capacity to contract beyond the confines of the province, and to enforce their contracts if recognized by the comity of nations, nevertheless, the shareholders of this company incorporated by a province may perhaps have the right to restrain the directors from imperilling their funds beyond the borders of the province. This would not in any way be a question
10 of capacity. I simply mention this point incidentally. I do not see it referred to in any of the opinions of the learned Judges of the Supreme Court.

I am of the opinion I should dismiss the petition. I think that under the circumstances of the case, and the fact that the respondents have recognized the corporate capacity by their acts, the dismissal should be without costs.

It is pressed upon me that the Crown are estopped by reason of what has taken place, but I cannot understand how when the capacity does not exist such capacity can be created by estoppel.

FORMAL JUDGMENT DISMISSING PETITION

In the Exchequer Court of Canada

TUESDAY, THE 28TH DAY OF APRIL, A.D. 1914.

PRESENT:

THE HONOURABLE MR. JUSTICE CASSELS.

IN THE MATTER OF THE PETITION OF RIGHT OF

THE BONANZA CREEK GOLD MINING COMPANY, LIMITED,
Suppliant,

(Seal) AND

10 HIS MAJESTY, THE KING,
Respondent.

THIS MATTER having come on for hearing and determination of the questions of law set up by the Respondent in paragraphs one and two of the Answer of the Respondent to the Petition of Right, on the 19th day of September, 1913, and the 14th day of March, 1914, pursuant to the orders of this Court made herein on the 4th day of June, 1913, and the 14th day of March, 1914, respectively, in presence of Counsel for the Suppliant and the Respondent, upon opening of the matter, upon hearing read the Petition of Right, the Answer and the Reply herein, the said orders of the 4th day of 20 June, 1913, and the 14th March, 1914, and the admissions and documents therein referred to, and upon hearing the evidence adduced by the parties as being necessary to the determination of the said questions of law, and upon hearing what was alleged by Counsel aforesaid, and in pursuance of and without prejudice to the provisions of the said orders, this Court was pleased to direct that this matter should stand over for judgment, and the same coming on this day for judgment.

1. THIS COURT DOTH ORDER AND ADJUDGE that the Petition of Right of the Suppliant be and the same is hereby dismissed.

2. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that there be 30 no costs to either of the parties herein.

By the Court,
(Sgd.) CHAS. MORSE,
Registrar.

Certified a true copy,
(Sgd.) CHAS. MORSE,
Registrar.

In the Supreme Court of Canada

Bonanza Creek Mining Co. vs. The King.

Reasons for Judgment

February 2nd, 1915. Sir Charles Fitzpatrick, C.J.

This is an appeal from a judgment of the Exchequer Court on a petition of right launched to recover damages in respect of breaches of agreements and leases alleged to have been vested in the appellant by assignments in the circumstances set forth in great detail in the petition.

The claim was disposed of in the Court below on the short ground that 10 the appellant was without capacity to accept the assignments of the leases and collateral agreements or to carry on mining operations in the Yukon Territory or to recover damages for the breach of the said agreements.

The appellant is a joint stock company incorporated by the Province of Ontario under the Provincial Companies' Act. The charter professes to authorize it to carry on the business of mining.

Being so incorporated it purported to obtain transfers of two certain hydraulic locations in the Yukon Territory, theretofore issued by the Dominion Government to one Doyle and one Matson, and to enter into certain agreements in respect thereof with the Dominion Government, and to obtain 20 certain certificates which are referred to in the documents introduced and the admissions made with a view to the final determination of the questions which arise upon the two grounds of defence hereinafter referred to.

The petition of Right was granted to settle certain disputes which arose between the appellant and the Government in respect of these leases and agreements. In answer to the petition, two grounds of defence were raised which I think are fairly set out in the respondent's factum, as follows:

(*a*) Want of corporate capacity on the part of the Suppliant Company to carry on its business in the Yukon Territory, and, in consequence thereof, incapacity to acquire the hydraulic leases already referred to, 30 or any rights thereunder, or to enter into the agreements with the Government in respect thereof, also already referred to, or to acquire or maintain any rights thereunder, or to receive any certificates or licenses purporting to entitle the Suppliant to carry on its business of mining in the Yukon Territory, or to acquire any rights under such certificates or licenses;

(*b*) Want of authority on the part of either the Yukon or the Dominion executive to issue any such certificates or licenses to the Petitioner, or to confer any such rights upon the Petitioner, as the Petition of Right claims.

40 This defence raises squarely in the first paragraph the important ques-

Reasons for Judgment of Fitzpatrick, C.J. Continued.

tion, so frequently considered here and, in my opinion, now finally disposed of by the Judicial Committee, of the power or capac ty of a company incorporated by a local legislature to carry on its operations in a territorial area over which the incorporating legislature has no jurisdiction. I adhere to what was said by me on this point in the Companies Reference, 48 Can. S.C.R. 339:

"The Parliament of Canada can alone constitute a corporation with capacity to carry on its business in more than one province. Companies incorporated by local legislatures are limited in their operations to the territorial area over which the incorporating legislature has jurisdiction. 10 Comity cannot enlarge the capacity of a company where that capacity is deficient by reason of the limitations of its charter or of the constituting power. Comity, whatever may be the legal meaning of the word in international relations, cannot operate between the provinces so as to affect the distribution of legislative power between the Dominion and the provinces under the British North America Act."

"This does not imply that a provincial company may not, in the transaction of its business, contract with parties or corporations residing outside of the province in matters which are ancilliary to the exercise of its substantive powers, I use the terms 'substantive and 'ancilliary' 20 as descriptive of the two classes of powers inherent in the company, as these are used in the judgment of the Judicial Committee in the City of Toronto v. Canadian Pacific Railway Co., 1908, A.C. p. 54."

It is not, of course, suggested that a provincial legislature may not incorporate a company for one of the objects enumerated in Sec. 92 of the B.N.A. Act, which, upon incorporation, enters into existence as an entity clothed with corporate powers; but the question raised and which must be decided in this appeal is: Can such a company exercise its functions or pursue the activities of its particular organization beyond the jurisdictional limits of the constituting power? In other words can a properly constituted pro- 30 vincial company exercise its powers (purposes or objects) locally outside of the province of incorporation. It may be that a provincial company can with the consent of another province exercise its civil capacities within the area of that province, but I am still of opinion that a provincial company cannot either with or without that consent fulfil the purpose for which it was organized; that is, discharge what may be described as its functional capacities, in this case mine for gold, outside the limits of the constituting province. To admit juristic persons to the enjoyment of civil rights is not the same thing as to admit them to exercise their functions or to pursue the activities of their particular organization, or in other words, to transplant 40 their institution to a foreign jurisdiction (Leiné, des Personnes Morales en Droit International Privé, 282). . . .

The Ontario Joint Stock Companies Act, under which the petitioner obtained its charter, enables a provincial charter to be granted "for any of the purposes or objects to which the legislative authority of the Legislature of Ontario extends."

Reasons for Judgment of Fitzpatrick, C.J. Continued.

The legislative authority of Ontario has never been deemed to extend to mining upon lands geographically or jurisdictionally situated beyond the province, and a provincial charter, issued to a company for the purpose of mining must find "the object or purpose" for which it was created—within and only within the field to which the legislature itself has deemed its authority to extend. There is not, it is quite true, a geographical limitation in the appellant's charter as to the territory in which it may carry on its operations, but the limitations of the constituting power must be read into the charter which must be construed as if it read: "The subscribers to the memorandum
10 of agreement are created a corporation for the purposes and objects described in the letters patent in so far as these purposes and objects are geographically and jurisdictionally situate within the province." As the Lord Chancellor said in John Deere Plow Company vs. Wharton, 1915, A.C. 330, p. 339, "the incorporation of companies with provincial objects cannot extend to a company the objects of which are not provincial." The business of mining in the Yukon Territory is not a provincial object with respect to Ontario. The Yukon Territory is not a province and is exclusively with respect to its public lands under legislative jurisdiction of the Dominion.

If this limitation is inherent in its constitution how could the appellant
20 company acquire by transfer or otherwise hydraulic mining locations in the Yukon Territory or enter into agreements for the purpose of operating those mines with the Dominion Government.

I agree with counsel for the Crown on the second branch of his defence for the reasons given in his factum.

Assuming that the company had the power to engage in mining operations in the Yukon Territory it did not comply with the statutory conditions subject to which it was entitled to carry on its operations. No joint stock company is recognized under the statute and the regulations as having any right or interest in any placer claim, mining lease or minerals in any ground
30 comprised therein unless it has a free miner's certificate unexpired. No joint stock company can obtain a free miner's certificate unless it is incorporated for mining purposes under a Canadian charter or licensed by the Government of Canada, and I interpret the statute 61 Vic., ch. 49, sec. 1, to mean that a British company and a foreign company are the only sort of joint stock companies that could be licensed there.

The same argument applies to the license given by the Deputy Minister of the Interior. He was without authority to grant any such license. To be effective such a license could only be issued by the Government through the Secretary of State and it is admitted that no such license was ever taken.
40 In effect I hold that the company was not competent to take the assignment from Matson and Doyle upon which it bases its claim, to enter into the alleged agreement with the Dominion Government with respect thereto, and also that the company could acquire no right or interest in or to a mining claim in the Yukon because it was excluded by the statute from obtaining a free miner's certificate.

The appeal should be dismissed with costs.

Reasons for Judgment of Davies, J.

DAVIES, J.

This action raises in a concrete form one of the questions referred to this court by H.R.H. The Governor General-in-Council as to the limitations, if any, which the B.N.A. Act imposes upon the legislatures of the provinces in giving them exclusive power to legislate in s. 92, ss. 11 respecting "The incorporation of companies with provincial objects."

In answering the questions submitted to us on that Reference I gave at length my reasons for holding that the power conferred was a limited one and that its limitation was territorial.

I have seen no reason to change the opinions I there expressed. The 10 company appellant in this case was incorporated in the Province of Ontario as a mining company. In my opinion it has neither the power nor the capacity to carry on mining operations in the Yukon Territory or District, that being a part of Canada thousands of miles distant from Ontario. It would seem quite unnecessary for me to repeat the reasons given by me in the Reference above referred to.

I would, therefore, dismiss the appeal with costs.

IDINGTON, J.

Reasons for Judgment of Idington, J.

The questions raised herein relate to the limits of the capacity of a company incorporated by provincial authority, acting within the powers con- 20 ferred in Sec. 92, Sub.-sec. 11 of the B.N.A. Act, to acquire property outside the province, or to contract for anything to be done for its benefit or omitted by it or anyone else, to be done for its use or benefit outside the province.

It has been heretofore usually assumed that men incorporated for any object might in their corporate capacity, acting within the scope of such object, do anything relative thereto for the purpose of serving such object, wherever the law of the country where done did not prohibit the doing thereof. This has been recently denied so far as provincial corporate creations are concerned. That denial is founded upon the discovery (long hidden from the ken of man) of manifold possible limitations inherent in said sub-section. 30 It has assumed many shapes.

That involved in the absolute denial of capacity for either contracting beyond, or contracting for anything to be done or to be got beyond the territorial limits, is easily understood; whatever may be thought of its legal validity.

But this denial of ordinary capacity which has assumed such various and varying shades of meaning that it is impossible to accurately define any line by which to bound the permitted operations of a limited sort beyond the territorial limits, is not quite so comprehensible.

The facts involved herein are so complicated that they may give rise 40 to the application of any one of these propositions comprehended in such denial of capacity, or specific shade thereof, that I think better they should be set out with some detail.

The appellant was incorporated in 1904 by Letters Patent issued under and by virtue of the Ontario Companies Act (a) to carry on as principal, agent,

contractor, trustee, etc., etc., the business of mining and exploration in all their branches, and (b) to apply for, purchase, lease, or otherwise acquire, patents, patent rights, trade marks, improvements, inventions and processes, etc.; and apparently incidental to these main purposes, by the means specified in ten succeeding clauses to do a great many things needless to state in detail here.

All we are concerned with is that what was specified either in said clauses (a) and (b) or the other subsidiary clauses, or both combined, contemplated the exercise, without saying where, of contracting powers and the acquisition 10 of such kind of rights and properties as involved in the issues raised herein. The place where operations of any kind were to be carried on is not stated further than that the head office of the company is to be at the City of Toronto. That must, therefore, be taken as the home wherein it carried on its business.

From the pleadings and the contracts, licences, and correspondence, made part of the case, we find the following facts or what have to be assumed such as to be dealt with herein.

The suppliant, now appellant, sets forth in its petition that one Doyle and his associates, and one Matson and his associates; each set respectively 20 had, in 1899 and 1900, applied to the Department of the Interior for Canada, each for a separate hydraulic mining location, and each became entitled thereto, and got leases from Her Late Majesty therefor; and thereupon looking to the further and better development of these properties, collateral agreements were entered into between Her Late Majesty, represented by the Minister of the Interior for Canada, and each of said set of parties respectively, in January, 1900, whereby the Minister was to observe that certain other properties should, in certain contingencies which took place, be granted by way of lease to these parties respectively. These leases and agreements entitled each of said set of parties with whom they were made to valuable 30 privileges. It is to be assumed for the present that they were valid and that there were moneys paid to the Crown thereunder and that, for or by reason of any breach of the obligations incurred on the part of the Crown, said parties or their assignee would thereby be entitled to claim heavy damages for losses so caused.

The appellant acquired these leases and agreements by assignment thereof, presumably in Ontario. I presume it thereby became entitled to such indemnification as the original holders respectively might have had at the time against the Crown, besides acquiring the right thereafter to realize the hopes and expectations of said parties and of the appellant thereunder. 40 The appellant on the 24th December, 1904, the day after its incorporation, got a free miner's certificate, under the regulations then in force, for which it paid the respondent a fee of $100 and kept it renewed, paying for such renewals, it is alleged, so long as the regulations governing mining in the Yukon required the owners of a hydraulic concession to hold a free miner's certificate. It is by no means clear that the possession of such a certificate was necessary to enable it or anyone else to make such acquisitions, though probably needed before actively engaging in operating a mine.

Reasons for Judgment of [illegible]dington, J. Continued.

The appellant upon acquiring such leases and agreements found the obligations of the Crown thereunder had not been lived up to and that land which fell within the scope and under the operation thereof, instead of being leased to appellant or its predecessor, had been relocated or let to other parties to the detriment of appellant either through its said predecessor in title or directly. Against such omissions, for a time, the appellant made fruitless protests.

On the 16th March, 1907, however, the Crown, represented by the Minister of the Interior, entered into an agreement with appellant—after reciting said leases, and that they had, and all the interests therein and there- 10 under of said lessee Doyle and others, and Matson and others, had become vested in the appellant and otherwise as appears therein—whereby the respondent leased to said appellant the lands in said mining claims enumerated in the schedule thereto, together with the exclusive right and privilege of extracting and taking therefrom, by hydraulic or other process, of royal or precious metals, etc., for the remainder of said terms of years, respectively, for which the said leases ran for the hydraulic mining locations within which the said claims were situate.

And there are assurances given therein that the Crown will in certain contingencies grant appellant a lease of other locations as and when reverting 20 to the Crown. This agreement and lease from respondent was executed at Ottawa.

Founded upon those things of which the foregoing is a brief outline, the appellant alleges it became and was entitled to certain services of water and water-rights and other privileges, all of which are to be presumed to be admitted; and the loss of large sums of money expended by relying upon each and all of said agreements being observed and of profits which might have been got, I assume is also admitted for the present.

On the 7th September, 1905, the appellant got a licence in pursuance of Chapter 59 of the Consolidated Ordinance of the Yukon Territory, author- 30 izing it to use, exercise and enjoy within the Yukon Territory, the powers and privileges and rights set out in the appellant's memorandum of association; for which it paid a fee of $500.

The authority of this is Sec. 2 of said ordinance and is thus expressed:

> "Any company, institution or corporation incorporated otherwise "than by or under the authority of an Ordinance of the Territory or "an Act of the Parliament of Canada desiring to carry on any of its "business within the Territory may," petition therefor, etc., "and the "Commissioner may thereupon authorize such company, etc., etc."

Again by the issue of the free miner's certificate, already referred to, 40 appellant seems to have been recognized pursuant to an Order-in-Council bound up with a Dominion Statute for 1898, on Page 39 of which the interpretation clause gives the following:

> "'Free miner' shall mean a male or female over the age of eighteen, but not under that age, or joint stock company, named in, and lawfully possessed of, a valid existing free miner's certificate, and no other.

* * * * * * * *

"'Joint stock company' shall mean any company incorporated for mining purposes under a Canadian charter or licensed by the Government of Canada."

The law of England relating to civil and criminal matters as it existed on the 15th July, 1870, was brought into force in the North-west Territories subject to certain exceptions, and the law in said territories continued in the Yukon by the Statute 61 Vic., Chp. 6, setting it apart saving also some exceptions.

Hence the English rule of law by which foreign corporations are by the 10 comity of nations recognized, I presume must prevail, until the contrary is shewn.

No Dominion Act is shewn prohibitive of any provincial incorporation doing business in the Yukon. If such a purpose ever existed it was quite competent for the Dominion to have so enacted inasmuch as the Yukon is within its legislative jurisdiction. As there are many mining companies operating elsewhere than in the Yukon and by virtue of provincial legislation, I imagine the possibility of such being tempted to help develop the Yukon would forbid such an imprudent policy as forbidding them. Yet we are asked to imply such from the omission in the Dominion Companies' 20 Act to provide specifically for their being licensed by the Dominion. The fact that the Yukon Ordinance as already pointed out did provide for such licences and no objection made thereto, indicates the policy of Parliament as to the Yukon as does also the above Order-in-Council.

All the foregoing claims, and possibilities thereof, are held by the Exchequer Court to have been answered by the legal effect of the following two paragraphs of the defence.

> "1. The Respondent denies that the Suppliant has now or ever has had the power either under Letters Patent, licence, free miner's certificate, or otherwise, to carry on the business of mining in the District 30 of the Yukon, or to acquire any mines, mining claims or mining locations therein, or an estate or interest by way of lease or otherwise in any such mines, mining claims or locations.
>
> "2. Should a free miner's certificate have been issued to the Suppliant the Respondent claims that the same is and always has been invalid and of no force or effect—that there was no power to issue a free miner's certificate to the Suppliant, a Company incorporated under Provincial Letters Patent, and that there was no power vested in the Suppliant to accept such a certificate."

and the said petition has been dismissed.

40 The learned trial judge assigns as reason for said dismissal, the answers given by the majority of this court in the Companies' case, 48 Can., S.C.R., 331.

With great respect I do not think that position is tenable unless by first forming an opinion which the learned trial judge disclaims. If a person approaches the problem of ascertaining what the judges meant with the preconceived opinion that a limitation is necessarily implied in the appellant's charter, or in any other provincial charter, then his conception of what the

Reasons for Judgment of Idington, J. *Continued.*

majority had agreed in is possibly warranted, but not otherwise. However, as expressed by the court above, these opinions bind no one. And unless approached in the way I suggest there is not a majority maintaining the view the learned judge acts upon.

On the other hand this court had decided in the concrete case of the Canadian Pacific Railway Company vs. Ottawa Fire Insurance Company, 39 Can. S.C.R. 405, against the view which the learned trial judge adopts as that of this court. True in that case, if the refusal of the late Mr.. Justice Girouard to express an opinion is counted against what seems to have been the opinion of three members of the court, it would then be an equally divided 10 court and the appeal resting upon the like contention set up herein failed. In such a case in appeal the negative thereby established the rule of law binding it for the future, for whatever it may be worth.

It is not for the mere triviality of the marshalling, so to speak, of judicial opinion in this court with which I am concerned. It is the fact that the seat of the Dominion Government is in Ontario, the home of appellant and that the transactions in question herein took place with that government there and by virtue thereof, and that the appellant paid moneys to respondent which at all events it is entitled to recover back on the principle this court almost unanimously followed in the said case. More that that the same 20 principles as supported by a majority of this court in that case would, I submit, entitle appellant to take an assignment of a lease and of a claim such as those parties had under whom appellant claims. How far the facts would have carried the matter and entitled the appellant to relief I cannot say.

It is to be observed further that the matter of a contract being *ultra vires* and hence uninforceable is not the same as one to be held void by reason of what may more accurately be described as illegal. From the latter nothing can spring entitling a plaintiff to recovery. There may arise herein such rights as to be cognizable by the court in order that justice may be done. Indeed in the said case of the Canadian Pacific Railway Company vs. Ottawa 30 Fire Insurance Company the right was asserted alternatively by the plaintiff to a recovery of the premiums paid, and that right was maintained by the opinion of the judgments of the Chief Justice of this court and Mr. Justice Davies, though holding the contract in question *ultra vires* of the defendant company.

In this case the recovery sought was not limited thereto, but I apprehend the greater might well have been held to include the less if that was all the suppliant had been found entitled to.

It hardly seems right (or indeed consistent with what one should expect to find following that decision) that the Crown having recognized the standing 40 of the appellant and taken its money when denying appellant's capacity to pay, should yet refrain from at least tendering so much amends.

Moreover the opinion of Mr. Justice Davies, concurred in by the Chief Justice, recognized the possibility of a provincial incorporation being entitled, in the way of that which might be found auxilliary to its business, of going beyond the boundaries of the incorporating province and thereby acquiring rights of property and rights of action arising out of such contracts

as it may thus have engaged in. (See Page 431 of the report of that case.)

What the range of possibilities may be of putting into operation such a view, I do not intend to attempt to define. Certainly the acquisition by assignment of the leases and agreements to the company do not seem necessarily excluded therefrom.

Exploration was one of the objects written in this charter and as incidental thereto, there are specified many things it is permitted to do in the way of acquisition. The ultimate aim of such exploration and that incidental
10 thereto doubtless was gain.

Proceeding upon any and all of the foregoing grounds and having regard to these results of a concrete case in this court, I most respectfully submit that the petition should not have been dismissed.

Passing these considerations let us come to the broader issues presented by the denial of the inherent capacity of any provincial corporate company going beyond the territorial limits of its parent province, either to contract there, or acquire there, property or rights of any kind, serving its uses in pursuit of its objects. Such companies are incorporated by virtue of the power in sub-sec. 11 of sec. 92 of the B.N.A. Act, expressed as follows:
20 "The incorporation of companies with provincial objects."

Such a view as involved in that denial I rather think was never presented in any court in Canada till the Canadian Pacific Railway Company vs. The Ottawa Fire Insurance Company case already referred to. Assuredly the contrary view was acted upon for forty years, to such an extent as to involve in the aggregate enormous sums of money in the way of contracts, by and with companies, which must be held *ultra vires* and void if the contention set up should prevail.

A microscopical examination of the phrase "provincial objects" cannot help much.

30 It is to be observed, however, that the word "objects" had been used prior to said Act, both in the English Joint Stock Companies' Act of 1862 and the Canadian Act in Chapter 65, sec. 1, of the Consolidated Statutes of Canada, as an apt description of what by the articles of association must form the basis of incorporation in either case respectively falling thereunder. And the word "provincial" can be given full force and effect, in the way I am about to submit, without further qualifying or restricting the well known use of the word "objects" in relation to companies so as to produce something as curious as contended for.

No one pretends the whole item No. 11, can apply to anything relative
40 to the purposes, aims or affairs of the government or its direction of the public institutions of the province, which are *prima facie* the only "provincial objects" as such. Counsel for the Dominion in the Companies' case, by introducing history, let us see how the unhappy phrase was begotten. If permissible to refer thereto, I have recorded it in Pages 362 and 363 of 48 Can. S.C.R., containing the report of that case.

Is there another possible meaning of the phrase "provincial objects"? Seeing it is an incorporation of companies that is designated it can surely

Reasons for Judgment of Idington, J. *Continued.*

mean nothing else than a provision for the incorporation of persons likely to develope the business activities of any kind seeking such development in any province. Does that necessarily imply that the business in any such case seeking development is to be confined in all or any of its operations within the territorial limits of the incorporating province? Surely such a limitation is and always has been since before the B.N.A. Act, something quite inconsistent with the requirements and expectations of business men looking to commercial success.

But why should we suppose it was thereby by the word "provincial" intended to engraft upon each provincial incorporation of a company the 10 limitation that it could not transact any business beyond the limits of the incorporating province? Those provinces which negotiated and arranged for this creation of a federal system and thereby determined what as result thereof should appear in the Act, had each up to its enactment coming into force, absolute power over the subject of the creation of incorporate companies. It is somewhat difficult to understand why they should be supposed to have intended to surrender that power essential to their local prosperity save in so far as necessary to facilitate the furtherance of the purpose had in view.

Can it fairly be said that such extreme limitations and restrictions as 20 argued for herein were so necessary? Was there not something else to be guarded against?

In assigning the control of property and civil rights in the provinces to the exclusive jurisdiction of provincial legislatures which would impliedly carry with it the right of incorporation, it may have been thought that the power of incorporation relative to the subject matters assigned to the Dominion might be impaired, or indeed render it necessary for its parliament to look to the province possessed of such far reaching powers, relative to property and civil rights, to aid it in that regard. To have thus by any possibility impliedly rendered parliament subservient to the will of any legisla- 30 ture, would have been embarrassing.

Again it may have been conceived undesirable that there should be the possibility of any conflict between the provinces by reason of one asserting as of right the power over or against another to invade its territory against its will, by any such legislation relative to companies. That view was upheld later by Ministers of Justice for the Dominion as will presently appear.

By framing the enactment as it is, these, and possibly other contingencies, were averted and the general rule of private international law (which I submit was well known)relative to the recognition of corporations abroad 40 by virtue of what has been called the comity of nations, was left to work out the solution of the question; as it has been in each individual case for nearly half a century with great benefit to all and detriment to none.

Some such reasons as well as the desirability of marking the contradistinction between the provincial corporations, which ought not to have for their objects any of the subject matters assigned to the Dominion, and Dominion corporations, or such of them as relate to any of the subject

matters assigned to the exclusive legislative jurisdiction of the Dominion, one can understand as having been deemed, if not necessary, yet desirable to facilitate the working out smoothly of the scheme as a whole. But why should that necessity have reached to the wholly unnecessary exclusion of trading either with the mother country or its colonies or the United States on any other foreign country; as had been done for many years by provincial companies?

In short why should it be supposed to have been intended to render training by provincial companies impossible?

10 The scheme of the Act was primarily to arrange for the federal union of four or five provinces until then having very large powers of self government. The framers thereof followed the example of the United States Constitution and its methods of assigning very large powers of legislative or administrative control to the governments to be created, by merely specifying the subject matter over which such powers were to be exercised, without elaboration of how; and in like manner prohibiting in terse terms the exercise of power over other subject matters.

They departed, as experience had then dictated in a marked degree, from the substance of the model. All I here desire to press is for a realization 20 of the fact that they made the best use they could, under the circumstances, of such a model, endeavoring to avoid rocks ahead, while trying to cure the ills the provinces laboured under.

Incidentally thereto it is not conceivable that they shut their eyes either to the commercial necessities, to which I have already adverted, or to the history of the development of the recognition of corporate capacity both in the United States and elsewhere, when transacting business beyond the limits of the corporate creating state. That question had theretofore, both in England and Canada, as well as in the United States, received much consideration. In the United States the question had also been considered 30 with relation to the constitutional limitations of the incorporating state as it is now presented relative to the powers of the provinces.

The discussion it gave rise to in the United States was long and keen. It culminated there in the decision of the case of Bank of Augusta vs. Earle, 13 Peters, 519, decided in the United States Supreme Court in 1839, which stands good law to-day.

The argument there as here was that the company should not go beyond its home state to do business, and the limitations of state powers were also relied upon. That eminent and able court held it could go wherever the comity of state or nations might permit.

40 The very different question of a foreign company, by its constitution inherently incapable of going abroad, had been presented to our old Upper Canadian Court of Queen's Bench in the case of the Genesee Mutual Insurance Company vs. Westman, 8 U.C.Q.B., page 487. Indeed some *obiter dicta* therein would go further, but the day was young then. Shortly after Confederation there arose in same court, the case of Howe Machine Company vs. Walker, 35 U.C.Q.B., 37, where the issue of the right of a foreign corporate company to do business in Canada was likewise presented and the right

maintained with the proper distinction made between that and the Genesee case. This was in 1873.

The decision is only of significance here as indicative of the view then taken and thus likely to have been held six years earlier by those framing the clause now in question. The English view is presented by the authorities collected in Westlake at sec. 305 of his work on Private International Law.

Is it conceivable that men, presumably holding the views of English law as thus expressed by either Canadian or English authorities, and knowing how that had been applied and worked out at that time under a federal system, deliberately designed the creation of something new and 10 wonderful to be operated with under the Canadian Federal System? I cannot assent to such a proposition. Those men had sense, and some of them, wide experience and great grasp of public affairs. To say that they had not in view the daily experience of Canadian trade and industries before their eyes and the futility of providing therefor by a new kind of corporate creature which it would take forty years to discover, is paying them a compliment which, I submit, is undeserved.

The relevancy of all this is that the instrument under consideration is not an ordinary contract or Act of Parliament, but one which if we would rightly understand it must be read with the eye of the statesman measuring 20 the future range of its effective yet harmonious operation in all its parts so as to make each and all productive of the best results when put in actual practice.

Then there is another practical aspect to be considered along with and consistent with that general survey of the question from a legal or constitutional point of view. It is this: In each of the provinces there are industries peculiar to its people. The adaptation of legislative contrivances needed to aid such people in promoting the development of its resources, whether of an agricultural, mining, fishing, lumbering, mercantile or mere financial (not banking) character, may have to be suited thereto and to the peculiar 30 character or habits of life, of the people of the province. That which would meet the wants of Nova Scotia might be quite unsuited to the requirements of Ontario or that suited to either fall short of promoting the welfare of the farmer on the western plains.

The promotion of any scheme needing legislation for its assistance, is most likely to bear speedy results when an appeal is made to those most directly interested. The vast extent of Canada and diversity of its natural resources, render in many cases the promotion at Ottawa of legislation only subservient to local needs, almost an impossiblity, and even where not impossible, very likely to lead to something less efficacious than what might 40 be obtainable if a local legislature were appealed to.

Such considerations or something like thereunto, no doubt were present to the minds of the framers of the Act and of this provision. And it was to give ample scope to the legislative activities of each province in relation to these provincial objects that it was designed.

Having regard to the situation of the then Canadian provinces, and what was then present to the minds of those acting, can anything more

absurd be conceived, than to suppose that those men realizing such a situation and looking to the future, deliberately planned that the incorporating power to be given the legislatures of the provinces for such objects as I have outlined, should be hampered by such limitations as are contended for herein, and never had existed elsewhere in the constitution of any legislature to which the like subject matters had been intrusted?

Reasons for Judgment of Idington, J. *Continued.*

A company incorporated with the object of exploring as indicated in appellant's charter might seek something in the United States or Mexico, for example. That is conceivable as a business enterprise. Why should
10 its promoters in Halifax, Toronto or Victoria have to go to Ottawa at a loss of time and money for such authorization as needed to obtain that common everyday business convenience and continuance used by business men?

What difference can it make whether incorporated at Toronto with a home there, or at Ottawa with a home there? Neither province nor Dominion can give it any right or power to go into those countries. All either can do is to give it a form or fashion by creating the legal entity by means of which men may co-operate for that object had in view. Beyond that in a foreign state it must depend entirely upon the comity of the nation concerned whether or not it can do anything.

20 The Ontario Legislature has always, I think, abstained from ostensibly proposing such ventures abroad, Its companies have been incorporated for a specific object or objects relative to some specified sort or kind of business and within that object in going abroad they have depended for effective recognition entirely upon comity.

In this case the appellant was recognized not only directly by the respondent by virtue of the transactions entered into between them, but also by the local executive of the Yukon.

It is said, however, that the word "provincial" so plainly indicates that it was designed that such corporations could not carry on business
30 beyond the province that there is an implied limitation in the capacity of each precluding it from availing itself of the advantages of recognition by virtue of the doctrine of comity. It is hard to get two to agree exactly in what that proposition does mean. If it ever had been conceived as once suggested in argument, but which no one has been bold enough judicially to affirm, that nothing could be done or be contracted for being done outside the territorial limits of the province, the situation of each province and the commercial relations of its people with those of the other provinces and of countries beyond the Dominion, were and remain such as to forbid a moment's serious consideration for such a curious proposition. Besides,
40 such a simple conception if ever entertained could have been concisely stated.

I, therefore, discard once and for all this very improbable conception of territorial limitations as ever having been intended to rest in the language used.

Let us then proceed to consider the theory of the implied limitations restricting business within lines including only that which may be ancilliary to the main object and be an "incidental necessity" thereof as, for example, the buying abroad of raw material, etc., and possibly the marketing of a

company's goods, without regarding other refinements which might be suggested; and see how it will stand the practical test.

If we apply our common knowledge to the actual facts in an attempt to realize what such corporate activity means, we may find how impossible it would be to make the theory a workable success.

The actual operations of these industrial concerns, of provincial origin, daily furnish us with illustrations.

Of the vast and ever increasing volume of business done by them with people in other provinces or abroad, more than one-half of what it represents is an actual carrying on, by the agents of such companies, of business outside 10 the province. The production of the articles is but a part of the business operation in order to reap the gain for which the corporation was created.

If, as has been suggested, the company has the right, of necessity, to go abroad for supplies, then the division of the carrying on of the business, within and without the province, is such that the part done outside the province greatly preponderates over that done within.

In such cases the company has to acquire abroad its raw material, arrange there for its importation, and then when manufactured, has often, of the like necessity, to send it again abroad to be marketed. Where, in 20 such case, if not as I suggest, is the major part of the business operation carried on? And where has the money been got to carry it on, and how? Has the business man as he ventures on each step of this process to stop and ask himself if he is within the incidental necessities of his corporate business? Has his foreign customer also to say "stop and show me, not how to answer "the easy old formula of whether the transaction is within the scope of the "objects of your company; but how to solve the queer puzzling riddle "of what some lawyers in your country of curiosities may say about the "actual incidental necessities" of the company in relation to the proposed transaction. And he might, if a foreigner of deep thought, ask what "neces- 30 sities" can mean anyway. Perhaps he might wisely conclude the transaction proposed was not a necessity for him.

Then the poor obfuscated beaten Canadian travelling homewards might well ask himself why anyone ever conceived he was such a fool as to try to do something that was not necessary for his business.

Again the mining and lumbering industries of some provinces and the development thereof are parts of the development of the natural resources therein and of the local Crown domain. These having thus peculiarly close relations with the local governments, who better fitted than these powers to determine how the corporations engaged therein are to be created and 40 controlled.

We also know from common knowledge that the miner has often to send his raw product abroad to be treated and then marketed, and in such cases bargains have necessarily to be made abroad involving a great deal more expense and variety of business transactions than the mere expense of digging it out of the earth. In the same way the incorporated lumberman may, indeed often does, find his timber in one province and his mill in

another and his market in a third province, or abroad, and occasionally he has to be an importer from abroad of his raw material.

Reasons for Judgment of Idington, J. *Continued.*

The courts in which a corporation has appeared as suitor or defendant always had, if its status was in question, to determine whether or not the business involved was of the kind which it was incorporated to transact. This new view of "incidental necessities" in substitution of primary objects as the measure of capacities, presents new puzzling possibilities hitherto unimagined.

What a fine field for the ingenious mind to roam over and dream in!
10 True, all these difficulties may be averted by practically blotting out the item No. 11 of the section in question and resorting entirely to the Dominion powers. But again, was that the meaning and purpose of the item?

Take another mode of testing this alleged limitation. The province is given, by item No. 10, the exclusive power of legislation relative to local works and undertakings except those of an interprovincial character, as specified. Railways and other works have been constructed by companies which had to rest, I submit, on no other authority than this item No. 11. It is all comprehensive or nothing. It will not do to say the grant of power to incorporate might be implied in No. 10 itself, without resorting to No. 11.
20 I admit the province as such could undertake such works.

I am referring to the numerous cases of railroads and other works constructed by companies empowered by a legislature to do so and incorporated by it for that purpose.

I submit such companies rest upon this very item No. 11 or nothing. For if implications relative to "companies" are to be permitted in item No. 10, then likewise does No. 13, "property and civil rights," carry in such case the like implication and so would end all this contention.

It seems generally conceded that this specific enactment excludes such implications so far as "companies" are concerned under provincial legisla-
30 tion and, if so, I do not see how they can exist relative to No. 10 any more than independently under No. 13.

Now these companies, beyond question, have gone abroad for almost everything, including the money got from stockholders and bondholders, as well as rails and all else. Who ever thought they were acting *ultra vires?* Are their contracts void?

And indeed no companies can be incorporated to execute such local works or undertakings save by local legislatures unless of the kind declared by virtue of sub-sec. (*c*) of Section 10, to be for the general advantage of Canada or of two or more provinces.

40 The enactment in item No. 11, by its terms does nor express any such thing as urged; then why with such obvious consequences of so reading it as abound on every hand, adopt that instead of the way it has been read so long?

With the limitations sought to be implied in such charters they may mislead and must be of little use. Not only that but they must obviously conflict with the true working out of Sec. 121 of the Act, in its true spirit, so far as the incorporated producer is concerned.

Reasons for Judgment of Idington, J. *Continued.*

Moreover, what must never be lost sight of, there is the fact, that the interpretation which I submit should prevail, has in actual practice been so long observed and acted upon and so much depends thereon that even if otherwise doubtful it should be upheld.

The products of our industrial activities of every kind have been and still are handled by provincially incorporated companies and sold abroad and commercial exchanges effected. Are these transactions all *ultra vires*, and these companies engaged in doing so liable to be met by the foreign dealer with a plea such as respondent sets up herein? These companies have often exchanged such products abroad for other goods, or bought goods 10 abroad with the money so got. Are they in any or all of these transactions liable to be met by such a plea?

And perhaps quite as frequently they have been, by the credit thus acquired, able to buy goods on credit; and are they in such cases entitled to say they were not liable as they were acting *ultra vires* in thus abusing their credit?

They have borrowed money abroad by virtue of direct contracts or manifold indirect transactions entered into in London, Paris, New York or elsewhere. Are they to be permitted to answer the claims of such creditors by a plea of the kind we are asked herein to give effect to? 20

And what of the shareholders who have put their money into such concerns as like as possible in principle to the venture herein involved?

Then the authority of Ministers of Justice insisting upon the exercise of the veto power is relied upon. Supposing each and every one of these reports of such ministers had stated that the Act must be so interpreted as counsel for the Crown desires, are we to abandon our functions?

These ministers, however, never ventured to enforce their opinions, if to be read in the way counsel suggests they do read, else we should have had the matter tested long ago in ways open to them. But the reports do not so far as I have seen bear that construction he puts upon them. Time 30 and again legislatures have apparently been alleged to have exceeded their authority by passing bills which expressly provided for the company thereby chartered acting abroad or in other provinces than its own. The Lieutenant-Governor in each of many such cases was told the bill would be vetoed unless withdrawn, and I presume each of these requests was duly complied with. It is not necessary here to express any opinion whether or not that cautious view was right or wrong.

That attitude towards legislation is a long way from maintaining what is contended for herein. I respectfully submit that it is only by a confusion of thought that what the ministers in question then forbade must necessarily 40 prohibit those incorporated companies with specified objects, suitable to the commercial needs of those in one of the provinces, from entering into contracts outside the province for the due execution of the purpose for which they were created.

For example, there is nothing inconsistent in the late Sir Oliver Mowat, as Attorney-General or Premier of Ontario, permitting scores of Ontario companies, when so created, to grow and flourish by reason of their foreign

connections and trade, and his insisting later as Minister of Justice at Ottawa, that if a provincial legislature should expressly enact that a company was entitled to carry on business in another country or province, it was acting improperly and possibly *ultra vires*.

Reasons for Judgment of Idington, J. *Continued.*

This appellant is only a small concern following no doubt that practice which grew up under the eye of that able man who so long and so successfully managed provincial affairs in and for Ontario. And he is now curiously quoted in argument as if, when acting as Minister of Justice, condemning it.

Counsel for respondent addressed to us an argument of some length 10 based upon the recent decision of the Judicial Committee of the Privy Council in the John Deere Plow Co. vs. Wharton, 1915, A.C. 330.

I am unable to understand the exact relation supposed thereby to exist between that long sought for but belated recognition of the power resting in item No.2 of Sec. 91 of the B.N.A. Act, assigning the regulation of trade and commerce to the Dominion, and the question of the quality of the capacity inherent in a provincial corporation to receive recognition outside the creating province. In an appeal to Parliament to exercise its power over the subject so assigned to it, and to enact legislation which would curb the aspirations of the provinces and their creatures, that decision might be used to justify 20 such legislation. It strikes me the argument is submitted to the wrong court.

Meantime, until Parliament has legislated in that direction, if it ever does, we must continue to keep within our judicial functions.

The practically minded might say that decision renders needless any disturbance of the long recognized capacity of provincially incorporated companies either herein or otherwise.

Indeed, counsel presented briefly, but stoutly, mining as a trade, and hence within the sphere of the operative effect of that decision. I hardly think such a view is necessarily to be attributed to their Lordships, whatever 30 may grow hereafter out of the said decision, in the way of centralizing our Government.

Nothing remains eternally stationary. Let us be patient and wait upon the evolutionary process which may spare us the probably painful consequences of rashly accepting counsel's theory of trade and commerce.

I must adhere to the view I have always taken, and maintained in the cases above cited, of our constitution as set out in the Act; that its aim and that of the framers thereof was to eliminate friction as much as possible and yet give freedom a chance; and trust to the results of experience to be gotten thereby. It was a distinct recognition of how utterly astray domineer-40 ing minds may be inherently prone to treat the rest of mankind as children when resorting to needlessly repressive measures. In that converse spirit of freedom every case presented problems, arising under said Act, for judicial solution should be weighed and the Act worked out accordingly in harmony with the ideals of those who framed it.

I do not see how the recognition of provincial company corporations as possessing the usual qualities of and capacities of other business corporations can fail to subserve, what the Act so read was intended to subserve, but I

Reasons for Judgment of Idington, J. Continued.

do see how any of the other interpretations contended for will materially tend to defeat such aims, intentions and purposes.

That view which I maintain, in no way extends to an interference with the very wide field of possible corporate activity, which may fall within the range of any of the subject matters assigned to the exclusive jurisdiction of the Dominion, and needing the exercise of corporate power to give efficacy to the enjoyment thereof.

It is not germane to the issues raised herein to enter upon a discussion of the limits of the Dominion's incorporating power, further than to point out and illustrate how relative to the said issues there is no conflict between 10 that and the exercise of the ordinary corporate capacity by the provincial companies.

And as to the rights of other provinces, they may be quite within their rights in refusing recognition if the incorporating province attempted what it should not. Even if they should stupidly seek to curb or curtail the commercial activity and enterprise of a neighbour (unless so far as in conflict with Section 121, to which I have referred) experience and the power of public opinion thus engendered will rectify such mistakes, if any.

With every desire to condense, so far as consistent with perspicuity, I find this opinion already too long drawn out. 20

Yet the neat point involved herein is within a very narrow compass. I have attempted by manifold illustrations to exemplify how unworkable the contentions set up might, if successful, prove, and how little in harmony they are with the probable conceptions of the framers of the Act.

The extreme importance of what may be involved in the ultimate decision and the desire to make that clear and meet the varying shades of opinions put forward, can alone justify such length.

Whether such companies may in transactions involving the sanction of the shareholders or board of directors got beyond the confines of the province be held; as according to some American decisions in like cases, inherently 30 incapable of dealing with such transactions outside the province, is entirely another question than here involved.

In the alternative view as bearing upon the present case I may make an observation or two.

The case of Comanche County vs. Lewis, 133 U.S.R. 202, cited to us by appellant's counsel, was decided by an eminent judge holding that the mere recognition by the legislature of an alleged corporation which might not otherwise have been held validly constituted, entitled that doubtful creation to recognition by the courts and, therefore, liable to be sued and judicially dealt with. 40

That decision, typical of what in many other cases has been treated as recognition of *de facto* corporations, suggests a good many curious questions more or less bearing upon one aspect of what we have in hand.

Is the power of incorporation so existent in the Crown in right of the Dominion as to enable it to incorporate without direct legislative authority relative thereto? If so, what is the effect of the recognition by the Crown of the appellant in these transactions now in question?

Re-incorporation can exist, indeed has more than once been legislatively effected. Can that be effected by the Crown? What more is necessary, therefore, than recognition? I express no opinion, and indeed have none, in relation thereto, or to the point made in the pleading of recognition and otherwise in argument, but not based on the suggestion I make. It may be that want of assent to re-incorporation is complete answer to such suggestions.

Reasons for Judgment of Idington, J. *Continued.*

That branch of the case was not thoroughly argued and, therefore, I have formed no opinion upon it. The point is not to be disposed of by the common-place that the Crown is not bound by any estoppel.

10 The honour and dignity of the Crown are, I respectfully submit, deeply concerned and the principles just now adverted to, or the range of the Exchequer Court jurisdiction which remains an unexplored field so far as argument in this case is concerned, ought to be fully considered if my view of appellant's rights are non-maintainable, in order that justice may be done.

In the manifold ways I have pointed out, there has been that recognition of the appellant which entitles it, if possessed of the inherent capacity which I hold it has, to succeed without resorting to these considerations.

The appeal should be allowed with costs and that part of the proceedings below, involved in this disposal of the first two paragraphs of defence, and the 20 case be remitted to the Exchequer Court for further trial and disposal of remainder of the case.

DUFF, J.

Reasons for Judgment of Duff, J.

Two minor points were taken by Mr. Newcombe which I shall dispose of first. "The regulations touching the disposal of mining locations to be worked by hydraulic process" approved 3rd December, 1898, which admittedly govern the appellants in respect of the rights in question in this action provide, by paragraph 4, that one of the conditions of the right to acquire any such location is the obtaining of a free miner's certificate under the "regulations governing placer mining." Paragraph 1 of the regulations 30 governing placer mining then in force authorizes the issue of free miner's certificates to persons over 18 years of age and to joint stock companies, and "joint stock company" is defined in the interpretation clause as meaning "any company incorporated for mining purposes under a Canadian charter or licensed by the Government of Canada." Mr. Newcombe's contention is that "Canadian" here means "Dominion" and "Canadian Charter" means an Act of the Parliament of Canada or an instrument emanating from the Government of the Dominion or deriving its validity from a statute of the Dominion Parliament. I think this contention is not well founded. It is no doubt proper to read the adjective "Canadian" as de- 40 scribing the kind of charters intended to be included by reference to the authority from which they emanate; and "Canadian" in this connection may doubtless be read in two different ways. It may be treated as indicating the relation of the authority to Canada as an entity—to the Dominion of Canada. On the other hand it is quite capable of being read as embracing every lawful authority in that behalf exercised within the territorial limits of Canada. Reading "Canadian" in this latter sense "Canadian

Reasons for Judgment of Duff, J. Continued.

charter" would mean a "charter" emanating from any lawful authority in Canada—capacity to acquire the right to pursue the business of mining in the Yukon being of course assumed. I think this is the meaning that ought to be attributed to it. The proposed construction would exclude not only companies incorporated under provincial authority, but a company incorporated by Yukon authority or by the North-west Territories' Council before the erection of the Yukon into a separate Territory. It would likewise disqualify companies incorporated by the provinces of Canada before Confederation, by British Columbia, for example, before 1871. These consequences appear to me to afford a sufficient reason for rejecting the proposed 10 construction.

The other contention is that by force of 61 Vic., c. 49, an Act of the Parliament of Canada, the carrying on of mining operations in the Yukon by any joint stock company or corporation excepting companies or corporations owing their existence to some Act of the Parliament of Canada or licensed under the statute is prohibited. The statute is permissive only. It does not contain a single word expressing prohibition. Nor can I find a single word in it which seems to imply a prohibition such as that contended for. If indeed there were any implied prohibition it is difficult to understand upon what ground the implication could be limited in the way sug- 20 gested. If this statute is to be read as *conditionally prohibiting* the carrying on of mining operations, as it most certainly does under the construction proposed, by a company incorporated by the old Province of Canada, or by the Province of British Columbia before Confederation, or by a "chartered company" in the strict sense, such, for example, as the Hudson's Bay Company, it is difficult to imagine what principle can justify such a construction which would not equally involve a like prohibition as against companies existing at the time the Act was passed and owing their existence to some Dominion statute. Any distinction between the two classes of cases could rest upon nothing in the statute itself, but must be founded upon mere 30 speculation as to the policy of it.

As to the point of substance.

The specific authority conferred by Sec. 92 (11) (the incorporation of companies with provincial objects) in relation to the subject there dealt with cannot be enlarged by reference to the more general terms of 92 (15) and 92 (16) "property and civil rights within the province" and "matters merely local and private within the province." (John Deere Plow Co. vs. Wharton, 19th Nov., 1914; 1915, A.C. 330; C.P.R. Co. vs. Ottawa Fire Ins. Co., 39 S.C.R., at pp. 461 and 462).. This appeal turns upon the answer to the question, what is the effects of the qualification "with provincial 40 objects" as regards the capacity of the appellant company to enter into the contracts which the appellant company's suit is brought to enforce and upon the validity of those contracts. The word "company" obviously does not embrace every kind of corporation. (See items 7 and 8 of Sec. 92 and Sec. 93); but the appellant company is indisputably a "company" within the meaning of the clause. "Provincial" means, I think, provincial as to the incorporating province; and although it is perhaps conceivable that as

regards companies formed for some communal or governmental purpose, the word "provincial" might be read as having reference to the province as a political entity, I think that as regards companies formed for the purpose of carrying on some business for private gain it must be read as having reference to the province as a geographical area.

It results, I think, from a series of dicta (which, if they have not the force of decisions, are still of such weight that it is my duty to follow them) that the undertaking or business of such a company and the powers and capacities conferred upon the company must when considered as an entirety
10 be so limited that the "objects" of the company fall within the description "provincial" in the sense mentioned. (See Citizens vs. Parsons, 7 A. C., 117 and 118; Colonial B. & I. Association vs. A. G. Quebec, 9 A. C., at pp. 165 and 166; John Deere Plow Co. vs. Wharton (P.C.) 19th Nov., 1914, 1915 A.C. 330. I think that whether the "objects" of a company under a given constitution or "charter" are "provincial" in this sense (or whether the possession of capacity to enter into a given transaction is compatible with the condition that the *company's "objects" shall be "provincial"*) is a question to be determined upon the circumstances of each case as it arises; and I doubt whether upon this point any more specific test than that supplied by the
20 language of Sec. 92 (11) itself can usefully be formulated now.

The appellant company's title to relief rests upon the proposition that the Letters Patent (by which it is incorporated) granted under the authority of the Ontario Companies' Act authorizing it to acquire mines and to carry on the business of mining generally without restriction as to locality, do confer upon it capacity to acquire the right to carry on the business of mining in the Yukon Territory or elsewhere under the territorial law as established by competent authority or that such capacity has been derived from some other source. I think the possession of such capacity does not flow from the Letters Patent on the ground that the business of mining (*i.e.* working
30 mines) generally without restriction as to locality is not a business that is "provincial" as to the Province of Ontario, and that a company having as one of its objects the carrying on of such business would not be a company "with provincial objects" within the meaning of section 92 (11); and that consequently Letters Patent professing to create a company to carry on such business could not be validly granted under the Ontario Companies' Act. I do not think it follows as a consequence that the Letters Patent of the appellant company are void, but only that the description of the objects of the company in the Letters Patent should be read as subject to the restriction necessarily imported by the reason of overriding enactment in section 92 (11). It
40 follows that the appellant company, a company incorporated pursuant to the provisions of the Ontario Companies' Act to carry on the business of mining must be deemed to be a company created with the object of carrying on that business only as a "provincial" (*i.e.* Ontario) business, in the sense mentioned.

What, then, is the effect of this restriction as regards the validity of the contractual engagements entered into between the appellant company and the Crown upon which the appellant company's suit is based? It has

Reasons for Judgment of Duff, J. Continued.

never been doubted in this country that the doctrine of *ultra vires* applies to companies incorporated under the Ontario Companies' Act, and that it does so apply was not disputed by the appellant's counsel and, indeed, it is not arguable that the reasoning of Lord Cairns, in Ashbury Railway Carriage & Iron Co. vs. Riche, L.R., 7 H.L. 653, by which his Lordship reached the conclusion that the doctrine governs companies formed under the Companies' Act, 1862, does not apply to the provisions of the Ontario Companies' Act. It results inevitably that the company had no capacity to enter into the contracts upon which the action is brought unless some additional capacity over and above that imparted to the company by the Ontario Companies' Act 10 has been acquired by it from some other source.

It does not appear to me to be necessary to consider for the purpose of this case whether the Yukon Council or the Dominion Parliament, from which the Yukon Council derives its legislative capacity, has the power constitutionally to legislate with regard to a company "incorporated" by a province "with provincial objects" in such a way as to change fundamentally its corporate nature and capacities. Our attention has not been called to anything in the Yukon law which properly construed can, in my opinion, be held to profess to authorize extra territorial companies to carry on within the territory any business which such company would otherwise be disabled 20 from carrying on by reason of restrictions upon its capacity laid down in its original constitution. The ordinance relating to the registration of extra-territorial companies cannot, I think, be held to contemplate any such enlargement of the corporate powers of companies taking advantage of its provisions.

This appears to be sufficient to dispose of the appeal. But an observation or two may be proper upon the contentions advanced on behalf of the appellant company.

First, it is argued that assuming it would be incompetent to a province exercising the powers conferred by section 92 (11) to incorporate a company 30 for objects other than "provincial objects" in the sense above mentioned, still that clause does not necessarily subject companies effectively incorporated for "provincial objects" to the principle of *ultra vires* in such a way as to incapacitate such a company from entering into valid transactions having no relation to such "provincial objects."

The doctrine of *ultra vires* reposes upon statute (Lord Cairns in Ashbury v. Riche, L.R., 7 H.L. at p. 658; Lord Haldane in Sinclair v. Brougham, 1914, A.C. at pp. 414 and 417. See also an article by Sir Frederick Pollock, 27 L.Q.R. at p. 223); and not upon any theory as to the inherent nature of corporations. It is very doubtful if it applies to corporations created by 40 Letters Patent in exercise of the Prerogative (Sutton's Case, 10 Rep. 30 b.; British South Africa Co. v. Debeers, 1910, 1 Ch. 354; Riche vs. Ashbury Railway Carriage & Iron Co., L.R. 9 Ex. at p. 263; Att. Gen. v. Manchester, 1906, 1 Ch. at 651; Wenlock v. River Dee Co., 36 Ch. D. at 685; Bateman v. Ashton-under-Lyne, 27 L.J. Ex. at 458), and there can be no doubt that as regards companies created under section 92 (11) a province can limit the operation of the doctrine provided that it does not legislate inconsist-

ently with the limitations upon its authority imported by the terms of that clause.

I find, however, two (to me) insuperable objections to this contention as applied to the present controversy: (*a*) A company having capacity to enter into valid transactions having no relation to any "object" which can be described as "provincial," does not appear to me on the assumption above stated, to be a "company with provincial objects" within the meaning of section 92 (11); and (*b*) Assuming a province to be competent to limit the application of the doctrine of *ultra vires* in the way supposed, still there remains the 10 difficulty that if the "objects" of the appellant company as stated in the Letters Patent are read as the carrying on of the business of mining as an *Ontario business* and not without restriction as to locality (as they must be read to bring the "objects" under the category "provincial"), then since it is not disputed that the doctrine of *ultra vires* applies to companies incorporated under the Ontario Companies' Act (and it is self-evident, as I have said, that Lord Cairns' reasoning in Riche vs. Ashbury Railway Carriage & Iron Co., L.R. 9 Ex. 224 applies to that Act) the appellant company must be held to possess only such powers and capacities as have relation to the "objects" so construed.

20 2nd. It is argued that "with provincial objects" does not define the class of companies in respect of which the legislative powers conferred upon the provinces by section 92 (11) are exercisable. The construction put upon section 92 (11) according to this contention is this: The clause is read as dealing with two subjects (*a*) the incorporation of companies, (*b*) the "rights" (as distinguished from the corporate capacities with which the incorporating province may endow the company when incorporated. Such "rights," it is said, must fall within the designation "provincial objects," but that restriction has nothing whatever to do with corporate capacities which may include every capacity [excepting capacities that by Sec. 91 (enumerated heads) can only be con- 30 ferred by the Dominion] with which an incorporeal subject of rights and duties can be endowed. And "object" according to this interpretation is "provincial" which can be carried out within the limits of the province, provided at all events that it is not one committed by the B.N.A. Act to the exclusive control of the Parliament of Canada. While in this view the province cannot invest the company with the right to carry out "objects" which are not "provincial," it can nevertheless endow the company with capacity to acquire rights and powers having no relation to such "objects" from any other competent legislative authority.

I have already indicated certain passages in the judgments of the Privy 40 Council which appear to me to be incompatible with this construction and to which I think effect ought to be given in this court, whether they strictly possess or do not possess the authority of decisions.

As may have been collected from what I have written above, I think that fairly read the observations referred to mean that the limitation expressed by "with provincial objects" has reference to the business or undertaking the company is capable under its constitution of carrying on, and the powers and capacities with which the company is for that purpose endowed,

Reasons for Judgment of Duff, J. *Continued.*

looked at as a whole; in other words, that by force of the phrase "with provincial objects" such a company is affected by a "constitutional limitation" which makes it incapable of pursuing "objects" not "provincial."

ANGLIN, J.

Reasons for Judgment of Anglin, J.

Two questions are presented in this case:

(*a*) Whether the appellant company, incorporated by the Province of Ontario to carry on mining operations without territorial limitation, has capacity to avail itself of the sanction of any competent authority outside Ontario to operate within its jurisdiction.

(*b*) Whether the appellant company was duly sanctioned to acquire 10 and operate mining properties in the Yukon Territory by authority competent to confer those rights.

On the first question, but for a misconception by the learned judge of the Exchequer Court of what I there stated—as inexplicable to me as it is unfortunate—I should merely refer to my views expressed in the Companies' Case, 48 S.C.R., 331, 452 et seq., as a sufficient presentation of my reasons for an affirmative answer. But, if what I said in that case is so ambiguous that it is open to the interpretation put upon it by Mr. Justice Cassells, it would seem advisable that I should endeavor to re-state my opinion in unmistakable terms. 20

The learned judge says:

"As I read the judgment of Mr. Justice Anglin, I would infer from it that his view would also be that a company incorporated by a province for the purpose of mining would be confined to the exercise of its main functions to the province incorporating it. He does state that he finds nothing in the language of Clause 11 of Sec. 92 of the British North America Act, which compels us to hold that the ordinary mercantile, trading or manufacturing company, incorporated by a province to do business without 'territorial limitation is precluded from availing itself of the so-called comity of a foreign state, or of a province, 30 which recognizes the existence of foreign corporations and permits their operations in its territory.'

"From this it would appear that the learned judge is dealing with the case of ordinary mercantile trading and manufacturing companies. I would not infer from his reasons that his view would be that where the business of the company is that of a mining company, such a company would have the capacity to carry on its mining business, namely, that of mining in a foreign country."

"The ordinary mercantile, trading or manufacturing company" was referred to in the passage quoted from my opinion in contrast to bodies 40 incorporated "for the establishment and maintenance of a hospital or the "building of a railway," mentioned in the sentence immediately preceding as examples of corporations the nature of whose objects implies territorial limitation, and because of the second part of the question then under consideration a company incorporated "for the purpose of buying and selling

"or grinding grain" was preferred as an example. The inference that a mining company was intended to be excluded from the class of provincial corporations entitled to avail themselves of international comity by the reference to an "ordinary mercantile, trading or manufacturing company" and to be placed rather within the class of which the hospital corporation and the railway company were given as examples, seems to me, with respect, to be scarcely warranted. But, without discussing further the question whether a mining company falls within the category covered by the description, a "mercantile, trading or manufacturing company", in order to remove any possibility
10 of future misapprehension, I shall state explicitly that the nature of the objects of a mining company incorporated by a province does not, in my opinion, involve an implication that its operations are to be confined within the limits of the province, and that, if its Letters Patent, or incorporating statute impose no territorial limitation, it may avail itself of the comity of another state or province.

Mr. Justice Cassels, however, proceeds to deal further with my opinion in the Companies' Case, 48 Can. S.C.R. 331. He says:

> "The second question submitted for the opinions of the court is as follows:
>
> 20 'Has a company incorporated by a provincial legislature under the powers conferred in that behalf by Sec. 92, Art. 11, of the British North America Act, 1867, power or capacity to do business outside the limits of the incorporating province? If so, to what extent and for what purpose?'
>
> "The answer of Mr. Justice Anglin is as follows:
>
> "'Yes—subject to the general law of the state or province in which it seeks to operate and to the limitations imposed by its own constitution—but not 'by virtue of (the powers conferred by its) provincial incorporation.'''
>
> 30 "If this answer is taken by itself, I infer from it that the learned judge was of opinion that the capacity of the incorporation was limited to the province in which the business was being carried on, as he limits his answer by the words 'but not by virtue of (the powers conferred by its) provincial incorporation.'"

Why the learned judge should have taken this answer by itself and without reference to the reasons on which it was based can only be surmised. In the answer "taken by itself" I have sought in vain for anything which warrants reading the categorical answer, "Yes" as "No." The quoted words, "but not by virtue of (the powers conferred by its) provincial in-
40 corporation," were taken from the second part of the question being answered. The allusion—sufficiently obvious, I thought—was to the passages in my opinion where I had discussed this question and stated the grounds on which I based my affirmative answer. For instance:

> "If the operations or activities of any foreign corporation should depend for their validity upon the powers conferred on it by the law of the incorporating state, it would in my opinion be difficult to sustain them, inasmuch as 'the law of no country can have effect as law beyond

Reasons for Judgment of Anglin, J. Continued.

the territory of the sovereign by whom it was imposed.' But the exercise of its powers by a corporation extra-territorially depends not upon the legislative power of its country of origin but upon the express or tacit sanction of the state or province in which such powers are exercised and the absence of any prohibition on the part of the legislature which created it against its taking advantage of international comity. All that a company incorporated without territorial restriction upon the exercise of its powers carries abroad is its entity or corporate existence in the state of its origin coupled with a quasi-negative or passive capacity to accept the authorization of foreign states to enter into 10 transactions and to exercise powers within their dominions similar to those which it is permitted to enter into and to exercise within its state of origin. Even its entity as a corporation is available to it in a foreign state only by virtue of the recognition of it by that state. It has no right whatever in a foreign state except such as that state confers.

* * * * * * * * *

"The provincial company is a domestic company and exercises its powers as of right only within the territory of the province which creates it. Elsewhere in Canada, as abroad, it is a foreign company and it depends for the exercise of its charter powers upon the sanction 20 accorded by the comity of the province in which it seeks to operate, which, although perhaps not the same thing as international comity, is closely akin to it.

* * * * * * * * *

"When the 'British North America Act' was passed, the doctrine of comity in regard to foreign corporations was well established as a rule of international law universally accepted. It had been long acted upon in English courts and had received Parliamentary recognition. Modern law acknowledges this capacity of every corporation, not expressly or impliedly forbidden by its state of origin to avail itself of 30 privileges accorded by international comity, as something so inherent in the very idea of incorporation that we would not, in my opinion, be justified, merely by reason of the presence in the clause expressing the provincial power of incorporation of such uncertain words as "with provincial objects," in ascribing to the Imperial Parliament the intention in passing the 'British North America Act' of denying to provincial legislatures, otherwise clothed with ample sovereign powers, the right to endow their corporate creatures with it, *Bateman vs. Service* (6 App. Cas. 386), at page 391. The impotency which such a construction of the statute would, in many instances, entail upon provincial companies 40 affords a strong argument against adopting it. Had Parliament intended in the case of the provincial power of incorporation to depart from the ordinary rule by confining the activities of every provincial corporation within the territorial limits of the province creating it, it seems to me highly improbable that the words 'with provincial objects' would have been employed to effect that purpose. Some such words as

'with power to operate only in the province' would have expressed the idea much more clearly and unmistakably. Inapt to impose territorial restriction the words 'with provincial objects' may be given an effect, which seems more likely to have been intended and which satisfies them, by excluding from the provincial power of incorporation such companies as have objects distinctly Dominion in character, either because they fall under some one of the heads of legislative jurisdiction enumerated in Section 91, or because they 'are unquestionably of Canadian interest and importance.'"

10 How the learned Judge of the Exchequer Court, with these passages before him, reached the conclusion that the answer given by me to the second question propounded in the Companies' Case, 48 Can. P.C.R. 331, meant that in my opinion the capacity of a provincial incorporation, without territorial limitation expressed in its charter or implied in the nature of its objects, "is limited to the province in which the business was carried on" (*sic*), assuming that he meant "limited to the province which granted the incorporation," I am at a loss to understand. But to remove the possibility of further misunderstanding I shall again state explicitly that a provincial corporation, not territorially limited by its Letters Patent or Act of Incorporation, or by the 20 nature of its objects, in my opinion has capacity, within the limitations of its constating instrument as to the character and extent of its undertaking, to avail itself of the comity of a foreign state or of another province.

The recent decision of the Judicial Committee in John Deere Plow Co. vs. Wharton was pressed upon us by counsel for the respondent. After a careful study of the judgment in that case I fail to find in it anything which conflicts with the views above expressed. All that was there decided is that a

> "Province cannot legislate so as to deprive a Dominion company of its status and powers. This does not mean that these powers can be 30 exercised in contravention of the laws of the province restricting the rights of the public in the province generally. What it does mean is that the status and power of a Dominion company as such cannot be destroyed by provincial legislation."

Certain provisions of the British Columbia Companies' Act requiring the appellant, a Dominion company, "to be registered in the province, as a condition of exercising its powers or of suing in the courts," were held to be "inoperative for these purposes."

> "The question," says the Lord Chancellor, "is not one of enactment of laws affecting the general public in the province and relating to 40 civil rights, or taxation, or the administration of justice. It is in reality whether the province can interfere with the status and corporate capacity of a Dominion company in so far as that status and capacity carries with it powers conferred by the Parliament of Canada to carry on business in every part of the Dominion. Their Lordships are of opinion that this question must be answered in the negative."

I may, perhaps, be pardoned if I quote from my opinion in the Companies' Case the short passage dealing with this point: (pp. 455-6).

Reasons for Judgment of Anglin, J. *Continued.*

"The Dominion company, on the other hand, is a domestic company in all parts of Canada. It exercises its powers as of right in every province of the Dominion. While a Dominion company is, generally speaking, subject to the ordinary law of the province, such as the law of Mortmain (*Citizens Ins. Co. vs. Parsons* (7 App. Cas. 96) P. 117)—while it may be taxed by the province for purposes of provincial revenue (*Bank of Toronto vs. Lambe* (12 App. Cas. 575), while it may be required to conform to reasonable provisions in regard to registration and licensing (The Brewers' Case (1897) A.C. 231), a provincial legislature may not exclude it, or directly or indirectly prevent 10 it from enjoying its corporate rights and exercising its powers within the province (*City of Toronto vs. Bell Telephone Co.*, (1905) A.C. 52); (*Campagnie Hydraulique de St. Francois vs. Continental Heat and Light Co.*, (1909) A.C. 194), as (subject perhaps in the case of alien corporations to the provisions of any general Dominion legislation dealing with them under clause 25 of Section 91) it may do in the case of other corporations not its own creatures."

I am, for these reasons, of the opinion that question (*a*) should be answered in the affirmative.

This case affords a striking illustration of the undesirability of having 20 the judges of this court express opinions upon abstract questions. Although it has been authoritatively stated time and again, and most emphatically in the Companies' Case itself, 1912, A.C., 571, 589; In Re-Reference 43 S.C.R., 536 at pp. 561, 588 and 592; (see also in re Criminal Code, 43 S.C.R., 434) that the opinions expressed in answer to such questions "are only ad- "visory and will have no more effect than the opinions of the law officers" and that they "do not affect the rights of the parties or the provincial "decisions" and are "not binding upon us," "or upon any of the judges "of the provincial courts," the learned judge of the Exchequer Court has deemed it 30

"the proper course (for him) to pursue to give effect to the opinion of the learned judges in the Supreme Court" * * * "I am not sure," he says "that technically I am bound by these reasons, but I have too much respect for the opinions of the Appellate Court not to follow their views no matter what my own opinion might be on the question"—

and he carefully abstains from expressing any opinion of his own, determining the case, as he apparently thought (though erroneously), in conformity with the views expressed by a majority of the judges of this court in the Companies' Case. While wishing to refrain from animadverting on the course 40 adopted by the learned judge, I may perhaps venture the observation that if a Superior Court judge of his experience finds advisory opinions given by the judges of this court so embarrassing that, although "not sure that technically (he is) bound" by them he deems it his duty to follow them regardless of his own views, they are likely to prove even more embarrassing and productive of trouble and uncertainty in courts of inferior jurisdiction.

I would answer question (*b*) in the affirmative for the reasons given by Mr. Justice Duff.

IN THE SUPREME COURT OF CANADA

Tuesday, the 2nd day of February, A.D. 1915

BEFORE:

The Right Honourable Sir Charles Fitzpatrick, G.C.M.G., Chief Justice,
The Honourable Mr. Justice Davies,
The Honourable Mr. Justice Idington,
The Honourable Mr. Justice Duff,
The Honourable Mr. Justice Anglin,

IN THE MATTER OF A PETITION OF RIGHT

10 BETWEEN:

THE BONANZA CREEK GOLD MINING COMPANY, LIMITED
(Suppliant) *Appellant,*

AND

HIS MAJESTY THE KING
(Respondent) *Respondent.*

THE APPEAL of the above-named Appellant from the judgment of the Exchequer Court of Canada, pronounced in the above cause on the 28th day of April, A.D. 1914, dismissing the Suppliant's Petition herein, having come on to be heard before this Court on the third and fourth days of Decem-
20 ber, A.D. 1914, in the presence of Counsel as well for the Appellant as the Respondent, whereupon and upon hearing what was alleged by Counsel aforesaid,

THIS COURT was pleased to direct that the said Appeal should stand over for judgment, and the same coming on this day for judgment,

THIS COURT did order and adjudge that the said judgment of the Exchequer Court of Canada, should be, and the same was affirmed, and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondent.

30 "E. R. CAMERON,"
Registrar.

Settled, Feb. 26, 1915.

RECORD.

In the Privy Council.

Order granting leave to appeal. (Extract). 27th May, 1915.

In the Privy Council.

Order granting special leave to appeal. (Extract.)

At the Court at Buckingham Palace.

The 27th day of May 1915.

* * * * * * * *

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 5th day of May 1915 in the words following viz.:—

" Whereas by virtue of His late Majesty King Edward the Seventh's 10
" Order in Council of the 18th day of October 1909 there was referred
" unto this Committee a humble Petition of the Bonanza Creek Gold
" Mining Company Limited in the matter of an Appeal from the Supreme
" Court of Canada between the Petitioners Appellants and Your Majesty
" Respondent setting forth " &c.

* * * * * * * *

" The Lords of the Committee in obedience to His late Majesty's
" said Order in Council have taken the humble Petition into considera-
" tion and having heard Counsel in support thereof their Lordships
" do this day agree humbly to report to Your Majesty as their opinion 20
" (1) that leave ought to be granted to the Petitioners to enter and
" prosecute their Appeal against the Judgment of the Supreme Court
" of Canada dated the 2nd day of February 1915 upon depositing
" in the Registry of the Privy Council the sum of £300 as security for
" costs (2) that the authenticated copy under seal of the Record pro-
" duced by the Petitioners upon the hearing of the said Petition ought
" to be accepted (subject to any objection that may be taken thereto
" by the Respondent) as the Record proper to be laid before Your
" Majesty on the hearing of the Appeal and (3) that the Appeal ought
" to be heard with the Consolidated Privy Council Appeals Nos. 10 30
" of 1914 and 7 of 1915."

His Majesty having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General Lieutenant-Governor or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

ALMERIC FITZROY.

RECORD.

In the Privy Council.

Order granting leave to intervene. (Extract.) 27th May, 1915.

Order granting leave to intervene. (Extract).

At the Court at Buckingham Palace.

The 27th day of May 1915.

* * * * * * * *

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 19th day of May 1915 in the words following viz. :—

" Whereas by virtue of His late Majesty King Edward The Seventh's
10 " Order in Council of the 18th day of October 1909 there was referred " unto this Committee a humble Petition of Your Majesty's Attorneys- " General of the Provinces of Quebec British Columbia Nova Scotia " New Brunswick and Ontario in the matter of an Appeal from the " Supreme Court of Canada between the Bonanza Creek Gold Mining " Company Limited Appellants and Your Majesty Respondent setting " forth " &c.

* * * * * * * *

" The Lords of the Committee in obedience to His late Majesty's " said Order in Council have taken the said humble Petition into con-
20 " sideration and their Lordships do this day agree humbly to report to " Your Majesty as their opinion that leave ought to be granted to " Your Majesty's Attorneys-General of the Provinces of Quebec, " British Columbia Nova Scotia New Brunswick and Ontario to inter- " vene in the Appeal and if they be so advised to put in a Printed Case " and to appear by Counsel at the hearing."

His Majesty having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

30 Whereof the Governor-General Lieutenant-Governor or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

ALMERIC FITZROY.

In the Privy Council.

No. 61 of 1915.

On Appeal from the Supreme Court of Canada.

BETWEEN

THE BONANZA CREEK GOLD MINING COMPANY, LIMITED
(*Suppliant*) *Appellant*,

AND

HIS MAJESTY THE KING
(*Respondent*) *Respondent*,

AND

THE ATTORNEYS-GENERAL FOR THE PROVINCES OF ONTARIO, QUEBEC, NOVA SCOTIA, NEW BRUNSWICK AND BRITISH COLUMBIA
Intervenants.

RECORD OF PROCEEDINGS.

BLAKE & REDDEN
17, Victoria Street, S.W.,
For Appellant and Intervenants.

CHARLES RUSSELL & CO.,
37, Norfolk Street, W.C.,
For Respondent.