

BETWEEN

1908
January 7. } THE KING ON THE INFORMATION OF THE
ATTORNEY-GENERAL FOR THE DOMINION
OF CANADA. } PLAINTIFF;

AND

THE BONANZA CREEK HYDRAU- }
LIC CONCESSION, LIMITED. } DEFENDANTS.

*Mining—Yukon Territory—Hydraulic lease—Breach of Conditions—Con-
struction—Forfeiture—Judgment for purposes of appeal.*

INFORMATION by the Attorney-General of Canada for the cancellation of a hydraulic mining lease and the delivery of possession of the lands covered by the lease to the Crown.

G. F. Shepley, K.C. and H. C. Bleecker for the plaintiff;

J. B. Pattullo, F. R. McDougall and J. P. Smith for defendants.

The case was heard at Dawson on the 24th July, 1907, before the late Mr. Justice Burbidge, who delivered the following judgment on the 7th January, 1908:—

I venture to ask the parties and anyone who reads this short note not to come to the conclusion that the judgment which I am about to enter is given upon due consideration of the merits of the case. At the time when the evidence taken at Dawson was forwarded to the Registrar of the court at Ottawa and the record thereby completed, and since that time, my other engagements were such as prevented me from taking the matter up and dealing with it in an adequate manner. And now the state of my health prevents me from giving the case the consideration which it deserves. However it

does appear to me to be important that the litigation should be advanced another stage, and that it is in the interests of the parties themselves that it be put in a position where the questions in issue may be brought before the Supreme Court of Canada rather than that there should be a rehearing and a reargument in this court. And for that I am not without a precedent. For in the case of *The Attorney-General for British Columbia v. The Attorney-General for Canada* (1) the decision of the Exchequer Court was taken by consent and without argument in order to facilitate the bringing of the case directly to the Supreme Court. It is true that in this case I have not the consent of the parties, but I think I may take it for granted that they would consent to a course of procedure which appears to me to be so much in their interests. The main question it seems to me that I need to decide is as to the party upon whom the burden of bringing the appeal should be thrown, and in this case I think that burden should fall upon the defendants.

1908
 THE KING
 v.
 BONANZA
 CREEK
 HYDRAULIC
 CONCESSION.
 ———
 Reasons for
 Judgment.
 ———

There will be judgment for the plaintiff.

*Judgment accordingly.**

Solicitors for the plaintiff: *McDonald, Shepley, Middleton & Donald.*

Solicitors for the defendants: *Belcourt & Ritchie.*

(1) 14 S. C. R. 345.

* REPORTER'S NOTE:—Reversed on appeal to Supreme Court of Canada, 40 S. C. R. 281.