

BETWEEN

THE KING, ON THE INFORMATION OF THE
 ATTORNEY-GENERAL FOR THE DOMINION
 OF CANADA..... } PLAINTIFF;

1908
 January 7.

AND

A. B. PALMER, R. H. PALMER }
 AND DAVID DOIG..... } DEFENDANTS.

*Mining—Yukon Territory—Hydraulic privileges—Lease—Breach of
 conditions—Recovery of possession of demised lands by Crown.*

INFORMATION to recover possession of certain mining
 lands in the Yukon Territory demised to the defendants,
 who were alleged to have broken the conditions of the
 lease.

July 26th, 1907.

The case was heard at Dawson by the late Mr.
 Justice Burbidge:

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

J. K. McRae for the defendants.

The following judgment was delivered by Mr. Justice
 Burbidge 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 engagements
 were such as prevented me from taking the matter up
 and dealing with it in an adequate manner. And now

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the state of my health prevents me from giving the case the consideration which it deserves. However, it does appear to me 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 or a re-argument 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. There will be judgment for the plaintiff.

Judgment accordingly.

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

Solicitors for the defendants: *McGiverin & Haydon.*

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