

In the Privy Council.

No. 49 of 1951.

33517

ON APPEAL FROM THE SUPREME COURT OF ALBERTA
(APPELLATE DIVISION)

INSTITUTION OF LEGAL
- 9 FEB 1954

BETWEEN

THE ATTORNEY GENERAL OF THE PROVINCE OF ALBERTA
(Defendant) APPELLANT

AND

WEST CANADIAN COLLIERIES LIMITED, INTERNATIONAL
COAL AND COKE COMPANY LIMITED, MCGILLIVRAY
CREEK COAL AND COKE COMPANY LIMITED, HILLCREST
MOHAWK COLLIERIES LIMITED, CADOMIN COAL
COMPANY LIMITED and BRAZEAU COLLIERIES LIMITED
(Plaintiffs) RESPONDENTS

AND

THE ATTORNEY GENERAL OF MANITOBA and THE
ATTORNEY GENERAL OF SASKATCHEWAN ... INTERVENANTS.

CASE OF THE
ATTORNEY GENERAL OF SASKATCHEWAN

1.—The Attorney General of Saskatchewan, Intervenant, adopts and relies upon the case of the Appellants, The Attorney General of the Province of Alberta and, for the reasons mentioned therein, and for the following additional reasons, submits that the Judgment of the Appellate Division of the Supreme Court of Alberta is wrong and should be reversed :

REASONS

1. BECAUSE the provision for payment of a royalty contained in the patent is a power or right in a contract, lease or other arrangement relating to mines, minerals or royalties reserved

to the Governor in Council which, having been entered into by the Dominion of Canada or created by it prior to the Natural Resources Agreement, 1930, constitutes a power or right which was ratified and confirmed by Section 3 of the said Natural Resources Agreement and by the said section was transferred to the Lieutenant Governor in Council of the Province.

2. BECAUSE the Dominion Parliament being supreme could by legislation vary the rate of payments required to be made under all grants or leases of land whoever the parties were. 10
In this case the patents or leases expressly provide for a change in the royalties to be paid and they are no less subject to legislative variation than any other patent or lease. The province under the Natural Resources Agreement, 1930, succeeded to these rights exercisable by the Dominion under the patents and leases.
3. BECAUSE if the view expressed by the Appellate Division of the Supreme Court of Alberta that the patents and leases were beyond the powers of the Lieutenant Governor in Council to grant or authorize be correct, then the whole 20
grant, or the whole lease, and not merely the reservation, is invalid in each case.

M. C. SHUMIATCHER.

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(Defendant) APPELLANT
AND
WEST CANADIAN COLLIERIES
LIMITED, INTERNATIONAL COAL
AND COKE COMPANY LIMITED,
McGILLIVRAY CREEK COAL AND
COKE COMPANY LIMITED,
HILLCREST MOHAWK COLLIERIES
LIMITED, CADOMIN COAL
COMPANY LIMITED and BRAZEAU
COLLIERIES LIMITED
(Plaintiffs) RESPONDENTS
AND
THE ATTORNEY GENERAL OF
MANITOBA and THE ATTORNEY
GENERAL OF SASKATCHEWAN
INTERVENANTS.

CASE OF THE ATTORNEY
GENERAL OF SASKATCHEWAN

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