

30

IN THE PRIVY COUNCIL

No.16 of 1973

O N A P P E A L
FROM THE FULL COURT OF THE
SUPREME COURT OF QUEENSLAND

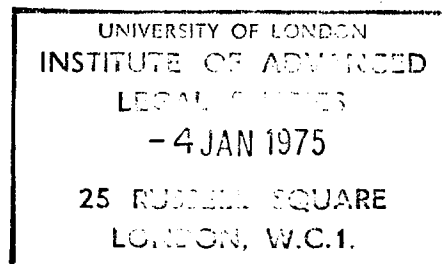
B E T W E E N :

CUDGEN RUTILE (NO.2) PTY. LTD. (First Plaintiff)
QUEENSLAND TITANIUM MINES PTY.
LIMITED (Second Plaintiff) Appellants

- and -

GORDON WILLIAM WESLEY CHALK (Defendant) Respondent

RECORD OF PROCEEDINGS



LOVELL, WHITE & KING,
1 Serjeant's Inn,
Fleet Street,
London, EC4Y 1LP
Solicitors for the Appellants

FRESHFIELDS,
Grindall House,
25 Newgate Street,
London, EC1A 7LB
Solicitors for the Respondent

(i)

IN THE PRIVY COUNCIL

No.16 of 1973

O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N :

CUDGEN RUTILE (NO.2) PTY. LTD. (First Plaintiff)
QUEENSLAND TITANIUM MINES PTY.
LIMITED (Second Plaintiff)
Appellants
- and -

GORDON WILLIAM WESLEY CHALK (Defendant)
Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No.16 of 1973

ON APPEAL FROM THE FULL COURT OF THE
SUPREME COURT OF QUEENSLAND

B E T W E E N :

CUDGEN RUTILE (NO.2) PTY.LTD.
(First Plaintiff)
QUEENSLAND TITANIUM MINES PTY. LIMITED
(Second Plaintiff)
Appellants

10

- and -

GORDON WILLIAM WESLEY CHALK
(Defendant) Respondent

RECORD OF PROCEEDINGS

NO. 1

No. 1

WRIT OF SUMMONS

Writ of
Summons

WRIT OF SUMMONS (ENDORSEMENT OF CLAIM ONLY)

26th June
1972

IN THE SUPREME COURT OF QUEENSLAND 1972 No.931

B E T W E E N : CUDGEN RUTILE (NO.2)
PTY LTD. First Plaintiff
QUEENSLAND TITANIUM
MINES PTY. LIMITED
Second Plaintiff

20

- and -

GORDON WILLIAM WESLEY
CHALK Defendant

(ENDORSEMENT OF CLAIM ON WRIT OF SUMMONS)

The Plaintiffs claim -

- (A) 1. Specific performance of a contract made in the month of July, 1966, between the Plaintiffs and the Government of Queensland, whereby it was agreed that the Government of Queensland would grant to the Plaintiffs, over any part of an area of approximately 18 square miles in the Parishes of Cooloola and

30

No. 1

Writ of
Summons

26th June
1972

(contd.)

Womalah, such mining leases as the Plaintiffs might apply for during a period of 4 years commencing on the 1st day of July, 1966.

2. If the Court declines to grant specific performance, damages for breach of contract.
 3. Further or alternatively, a declaration that the Plaintiffs are entitled to the grant to them of Special Mineral Lease Applications Nos. 323, 324, 325 and 326 Gympie District. 10
- (B) In the alternative to (A) damages for breach of warranty.
- (C) An injunction restraining the Defendant and all other officers, servants and agents of the Government of Queensland, including the Conservator of Forests, from presenting or taking any steps to present to His Excellency the Governor in Council any proposal or recommendation that the areas the subject of the said Special Mineral Lease Applications be declared a National Park. 20
- (D) An order that the Defendant repay to the Plaintiffs the sum of \$1,000.00 paid by the Plaintiffs as a deposit pursuant to the terms of the said contract.
- (E) Such further or other relief by way of declarations or otherwise, as to the Court may seem meet. 30
-

3.

NO. 2

No. 2

REQUEST FOR FURTHER PARTICULARS

Request for
Further
Particulars

Mr. Campbell
MJC:MOD

Crown Solicitor,
Treasury Building,
Queen Street,
Brisbane, Queensland. 4000

6th October
1972

RECEIVED
9 OCT 1972

6th October, 1972

Gentlemen,

10

re: Action No. 931 of 1972
Cudgen Rutile (No.2) Pty.Ltd.
and Queensland Titanium Mines
Pty. Limited v. G.W.W. Chalk

20

I refer to the Statement of Claim in this action and request that you advise in relation to the agreement alleged in paragraph 28(a) thereof whether it is alleged that it is contained solely in writing (including the letter dated 6th July, 1966) or partly in writing (in which case identify documents) or that it is oral or partly oral, in which case give particulars of the person or persons, occasion or occasions, place or places where made and substance of agreement.

Yours faithfully,

(signed) H.E. CARR BOYD

(H.E. Carr-Boyd)

Crown Solicitor

30

Messrs. Chambers McNab & Co.,
Solicitors,
Qantas House,
188 Queen Street,
BRISBANE. Q. 4000.

No. 3

NO. 3

Further
Particulars

FURTHER PARTICULARS

CHAMBERS McNAB & CO.

17th October
1972

MJC/MOD
GBH/JH

Qantas House
288 Queen Street
Brisbane
Queensland 4000

17th October, 1972

The Crown Solicitor,
Treasury Building,
Queen Street,
BRISBANE. 4000

10

Dear Sirs,

re Action No.931 of 1972
re Cudgen Rutile (No.2) Pty Ltd.
and Queensland Titanium Mines
Pty. Ltd. v. G.W.W. Chalk

We acknowledge receipt of your letter of 6th
inst., and advise that the Agreement is solely in
writing, the writings in question being:-

20

- (a) the Plaintiffs' letter dated 27th June, 1966
(referred to in paragraph 7 of the Statement of
Claim):
- (b) the Defendant's letter dated 6th July, 1966
(referred to in paragraph 8 of the Statement of
Claim):
- (c) the Plaintiff's letters dated 19th and 21st
July, 1966 (both referred to in paragraph 10
of the Statement of Claim).

Yours faithfully,

30

CHAMBERS McNAB & CO.

STATEMENT OF CLAIM AS AMENDED

Statement of
Claim as
Amended

IN THE SUPREME COURT OF QUEENSLAND No.931 of 1972

Writ Issued the 29th day of June 1972

29th November
1972

B E T W E E N : CUDGEN RUTILE (NO.2)
 PTY. LTD. First Plaintiff
 QUEENSLAND TITANIUM
 MINES PTY. LIMITED
 Second Plaintiff

- and -

GORDON WILLIAM WESLEY CHALK
Defendant

10

AMENDED STATEMENT OF CLAIM

Delivered the 29th day of November 1972.

1. The First Plaintiff is a company duly incorporated in the State of Queensland and having its registered office at care of Messieurs. Feez Ruthning & Co., Bank of New South Wales Chambers, 260 Queen Street, Brisbane.

20 2. The Second Plaintiff is a company duly incorporated in the said State and having its registered office at 81 Ashmore Road, Southport.

3. The Defendant is a Nominal Defendant appointed herein by His Excellency the Governor in Council under the provisions of The Claims against Government Act of 1866.

30 4. On or about the 20th day of January 1965 the Honourable Ernest Evans then Minister for Mines in the State of Queensland granted to the Plaintiffs an Authority to Prospect under The Mining Acts, 1898 to 1955 (therein and hereinafter called "the Acts") numbered 270M.

5. On or about the 5th day of July 1965 the term of the said Authority to Prospect was duly renewed for a period of One year from the 1st day of July 1965.

6. In accordance with the terms of the said Authority to Prospect the Plaintiffs were entitled to an

No.4
Statement of
Claim as
Amended

29th November
1972
(contd.)

extension of the term of the said Authority to Prospect for a term of One year from the 1st day of July 1966 and all things had been done and all conditions had been fulfilled necessary to entitle the Plaintiffs to such extension aforesaid.

7. By application dated the 27th day of June 1966 the Plaintiffs made application in accordance with the Acts and the terms of the said Authority to Prospect for the extension of the term of the said Authority to Prospect referred to in paragraph 6 hereof.

10

8. By a letter dated the 6th day of July 1966 the Government of Queensland by its servant the Under-Secretary for Mines made an offer to the Plaintiffs in the words and figures following that is to say:

" With reference to your application of 27th June, 1966 for renewal of Authority to Prospect No.270M, I have been authorised to offer you instead an Authority to Prospect, as indicated in the attached draft, over the Crown Land and private land and reserves (excluding National Parks) in the area at present comprised in Authority to Prospect No. 270M, exclusive of the land held in accordance with the Acts, at the date of proclamation of the lands, by any person under any claim, mining lease or application therefor or Authority to Prospect for the minerals specified in Clause 5 of the attached draft.

20

This offer lapses Twenty one days from the date of this letter unless I receive by then acceptance of the offer and the sum of \$1,208 (being the deposit and rental for the first year)."

30

9. The area the subject of such offer was the area the subject of the Authority to Prospect (numbered 270M).

10. Such offer was duly accepted by the Plaintiffs by letters dated the 19th and 21st days of July, 1966 and the said sum of \$1,208.00 (being comprised of \$1,000.00 deposit and \$208.00 rental for the first year) was duly paid.

40

11. On the 4th day of August 1966 and consequent

upon the acceptance by the Plaintiffs of such offer, His Excellency the Governor in Council granted to the Plaintiffs an Authority to Prospect numbered 348M over so much of the said areas as were reserves within the meaning of the Acts.

No.4

Statement of
Claim as
Amended

12. On the 15th day of September, 1966, and consequent upon the acceptance by the Plaintiffs of such offer, the Honourable the Minister for Mines granted to the Plaintiffs an Authority to Prospect (also numbered 348M) over so much of the said area as was Crown Land within the meaning of the Acts and as was private land within the meaning of The Mining on Private Land Acts, 1909 as amended.

29th November
1972

(contd.)

13. Each of the Authorities to Prospect referred to in paragraphs 11 and 12 hereof:-

- (a) was granted to the Plaintiffs for a term of 4 years commencing on the 1st day of July 1966; and
- (b) granted to the Plaintiffs the right during such term to prospect the said lands, including the right to conduct such geological and geophysical examinations, aerial and contour surveys, drilling and shaft sinking as might from time to time in the opinion of the Plaintiffs be appropriate for the purpose of determining the existence or otherwise of minerals (including gold but excluding coal, mineral oil and petroleum) and their extent and nature in the said lands.

14. Certain of the terms of the said Authorities to Prospect were:-

- (a) that the Plaintiffs should pay to the Government of Queensland a rental of \$208.00 per annum in respect of the said area; and
- (b) that the Plaintiffs should, during the said period, continuously prospect the said lands or carry out such other investigations in respect thereof as the Honourable the Minister for Mines might approve, and should bona fide expend or cause to be expended the sums of money set out hereunder in respect of such

No. 4

prospecting and investigations:-

Statement of Claim as Amended	<u>Period</u>	<u>Commencing</u>	<u>Not less than</u>
	1 year	1st July 1966	¥25,000.00
	1 year	1st July 1967	¥30,000.00
	1 year	1st July 1968	¥30,000.00
29th November 1972	1 year	1st July 1969	¥30,000.00
(contd.)		Total	¥115,000.00

15. The Plaintiffs duly complied with all of the terms of the said Authorities to Prospect and in particular:-

10

- (a) duly paid to the Minister the said annual rental as and when it fell due; and
- (b) expended in prospecting and investigations in respect of the said area annual sums well in excess of the minimum expenditure required by the terms of the said Authorities to Prospect.

16. In the course of such prospecting operations and investigations, the Plaintiffs discovered and proved that the said area contained large deposits of rutile and zircon and deposits of ilmenite, monazite and other minerals of commercial value.

20

17. The deposits of minerals referred to in paragraph 16 hereof were such that they could be economically worked at a very great profit to the Plaintiffs.

18. At the time of the acceptance by the Plaintiffs of the offer referred to in paragraph 8 hereof and at all material times thereafter, the Government of Queensland knew:-

30

- (a) that the said area contained large deposits of the minerals referred to in paragraph 16 hereof;
- (b) that such deposits were capable of being economically worked at a very great profit to the Plaintiffs;
- (c) that the Plaintiffs intended, during the

term of the said Authorities to Prospect, to carry out prospecting and investigations in order to determine the extent and location of such deposits;

No. 4

Statement of Claim as Amended

(d) that the Plaintiffs intended, during the term of the said Authorities to Prospect, to apply to the Government of Queensland, for the grant to them of mineral leases in respect of the lands containing such deposits.

29th November 1972

(contd.)

10

19. It was a term of each of the said Authorities to Prospect that subject to the performance and observance of the provisions of the said Acts and of the terms, conditions, provisions and stipulations of each such Authority to be performed or observed by the Plaintiffs, the Plaintiffs should be entitled at any time and from time to time during the term of such Authorities to apply for and have granted to them in priority to any other person or company, a mining lease for inter alia the minerals hereinbefore referred to, over any part of the areas subject to the said Authorities.

20

20. On the dates set out hereunder the Plaintiffs duly applied for the grant to them of Special Mineral Leases Nos. 323, 324, 325 and 326 Gympie District in respect of the said proven Minerals by lodging applications therefor in the office of the Mining Warden at Gympie. The dates of lodging such applications were:-

30

SML-323	-----	29th January, 1970
SML 324	-	2nd February, 1970
SML 325	-	2nd February, 1970
SML 326	-	2nd February, 1970

21. (a) ~~Portion of the area applied for by the Plaintiffs as the said SML 324 (namely an area of approximately 4,760 acres) was within the areas subject to the said Authorities to Prospect, and amounted to a total of approximately 11,130 acres divided as follows:~~

40

(b) The whole of the area applied for by the ~~SML-323-----1,220-acres~~

No. 4
 Statement of
 Claim as
 Amended
 ———
 29th November
 1972
 (contd.)

Plaintiffs as the said SML 325 (namely an
 SML-324-----7,920-acres
 area of approximately 1,060 acres) was
 SML-325-----1,060-acres
 within the areas subject to the said
 SML-326-----930-acres-
 Authorities to Prospect.

(c) The whole of the area applied for by the
 Plaintiffs as the said SML 326 (namely an
 area of approximately 930 acres) was
 within the areas subject to the said
 Authorities to Prospect.

10

22. In accordance with the Acts and Regulations
 thereunder the said applications were duly heard and
 considered by the Mining Warden at Gympie on the
 following days:-

20th March, 1970	15th May, 1970
20th April, 1970	18th May, 1970
11th May, 1970	19th May, 1970
12th May, 1970	20th May, 1970
13th May, 1970	21st May, 1970
14th May, 1970	

20

23. At the hearing of the said applications numerous
 persons and bodies appeared as objectors to the said
 applications contending that the Plaintiffs should
 not be permitted to conduct mining operations in the
 areas the subject of the said applications.

24. After the conclusion of the said hearing and in
 accordance with the Acts and Regulations thereunder
 the Mining Warden, on or about the 27th day of July,
 1970, reported to the Minister that each of the
 leases applied for by the Plaintiffs should be
 granted.

30

25. The Plaintiffs have complied in all respects
 with the terms of the said Authorities to
 Prospect and all acts have been done and all
 conditions have been fulfilled under the said Acts
 and otherwise and under the terms of the said
 Authorities to Prospect necessary to entitle them
 to have the grant to them of the said SML 325
 and the said SML 326, and to the grant to them of
 leases, and the Plaintiffs have requested
 a Mining Lease over the portion of SML 324
 the said Government to grant or procure the grant
 referred to in paragraph 21(a) hereof, for the
 to them of the same.
 minerals referred to in the Plaintiffs'
 application for the said SML 324

40

26. The Government of Queensland has refused and neglected to grant any of the said leases to the Plaintiffs and has declared and continues to declare and maintain that the Plaintiffs are not entitled to the grant to them of the said leases over the said areas or any of them and has repudiated any obligation to grant or cause to be granted to the Plaintiffs ~~the-said~~ such leases or any of them.

No. 4

Statement of
Claim as
Amended

29th November
1972

(contd.)

10 27. As a result of such refusal the moneys expended by the Plaintiffs in carrying out such prospecting and investigations and in making preparations for mining the said deposit of minerals and the costs incurred by the Plaintiffs in applying for the said leases over the said areas have been wasted, the Plaintiffs have lost the profits which they would have obtained from the sale of the said minerals when extracted, and the Plaintiffs have suffered other loss and damage.

20 28. (a) (Alternatively to the matters referred to in paragraphs 10 to 27 inclusive aforesaid) by an agreement made in the month of July 1966 between the Government of Queensland of the one part and the Plaintiffs of the other part the Government of Queensland for the considerations appearing in and by the said letter dated the 6th day of July 1966 warranted to the Plaintiffs:

30 (i) that the Government of Queensland was empowered to grant or cause to be granted and would grant or cause to be granted to the Plaintiffs an Authority to Prospect or Authorities to Prospect in accordance with the draft document referred to in the said letter; and

40 (ii) that the Government of Queensland was empowered to grant or cause to be granted and would grant or cause to be granted to the Plaintiffs the right (subject to due performance and observance of the provisions of the Acts and the terms conditions provisions and stipulations of the said draft document on the part of the Plaintiffs to be performed and observed) to have granted to them a

No. 4

Statement of
Claim as
amended

29th November
1972

(contd.)

mining lease for the minerals referred to in the said draft document under the Acts over any part of the lands referred to in the said draft document.

28. (b) At the time of the making of the agreement referred to in paragraph 28(a) hereof and at all material times thereafter, the Government of Queensland knew:-

(i) that the lands referred to in the draft document referred to in paragraph 28(a) hereof contained large deposits of the minerals referred to in paragraph 16 hereof; 10

(ii) that such deposits were capable of being economically worked at a very great profit to the Plaintiffs;

(iii) that the Plaintiffs intended, during the term of the said Authorities to Prospect, to carry out prospecting and investigations in order to determine the extent and location of such deposits; 20

(iv) that the Plaintiffs intended, during the term of the said Authorities to Prospect, to apply to the Government of Queensland, for the grant to them of mineral leases in respect of the lands containing such deposits.

29. All things happened and all times elapsed and all conditions were fulfilled necessary to entitle the Plaintiffs to the fulfilment of the said warranties by the Government of Queensland and to the grant to the Plaintiffs of the Authority or Authorities to Prospect referred to in paragraph 28 (a)(i) hereof and to the grant to the Plaintiffs of a mining lease referred to in paragraph 28(a)(ii) hereof. 30

30. If it be held that the Government of Queensland was not empowered as set forth in paragraph 28(a)(i) hereof the Plaintiffs claim damages for breach of the warranty referred to in paragraph 28(a)(i) hereof. 40

31. If it be held that the Government of Queensland

was not empowered as set forth in paragraph 28(a) (ii) hereof the Plaintiffs claim damages for breach of the warranty referred to in paragraph 28(a)(ii) hereof.

No. 4

Statement of
Claim as
Amended

—
29th November
1972

(contd.)

- 10 32. (Alternatively to the matters referred to in paragraphs 10 to 27 inclusive and paragraphs 28 to 31 inclusive aforesaid) on the 4th day of August 1966 His Excellency the Governor in Council purported to grant to the Plaintiffs an Authority to Prospect (numbered 348M) over so much of the area referred to in the draft document aforesaid as was a reserve or reserves within the meaning of the Acts; and on the 15th day of September 1966 the Honourable the Minister for Mines purported to grant to the Plaintiffs an Authority to Prospect (also numbered 348M) over so much of the said area as was Crown Land within the meaning of the said Acts and as was private land within the meaning of The Mining on Private Lands Act 1909 (as amended).
- 20 33. (a) Each of the Authorities to Prospect referred to in paragraph 32 hereof contained the terms referred to in paragraphs 13, 14 and 19 hereof.
- (b) At the time of the granting of each of the Authorities to Prospect referred to in paragraph 32 hereof, the Government of Queensland knew:-
- 30 (i) that the areas the subject of the said Authorities to Prospect contained large deposits of the minerals referred to in paragraph 16 hereof;
- (ii) that such deposits were capable of being economically worked at a very great profit to the Plaintiffs;
- (iii) that the Plaintiffs intended, during the term of the said Authorities to Prospect, to carry out prospecting and investigations in order to determine the extent and location of such deposits;
- 40 (iv) that the Plaintiffs intended, during the term of the said Authorities to Prospect, to apply to the Government of Queensland, for the grant to them of mineral leases in respect of the lands

No. 4

containing such deposits.

Statement of
Claim as
Amended—
29th November
1972

(contd.)

34. By the grant of the said Authorities to Prospect referred to in paragraphs 32 and 33 hereof the Government of Queensland warranted to the Plaintiffs that the Government of Queensland was empowered to grant or cause to be granted and would grant or cause to be granted to the Plaintiffs the right (subject to due performance and observance of the provisions of the Acts and the terms conditions provisions and stipulations in the said Authorities to Prospect on the part of the Plaintiffs to be performed and observed) to have granted to them a mining lease for the minerals referred to in the said Authorities to Prospect under the Acts over any part of the lands referred to in the said Authorities to Prospect.

10

35. All things happened and all times elapsed and all conditions were fulfilled necessary to entitle the Plaintiffs to the fulfilment of the said warranties by the Government of Queensland and to the grant to the Plaintiffs of the mining lease referred to in paragraph 34 hereof.

20

36. If it be held that the Government of Queensland was not empowered as set forth in paragraph 34 hereof the Plaintiffs claim damages for breach of the warranty referred to in paragraph 34 hereof.

37. It was a term of each of the said Authorities to Prospect that the sum of \$1,000.00 (being the amount of the deposit as referred to in paragraph 10 hereof) would, subject to the performance and observance by the Plaintiffs of the provisions of the said Acts and of the terms, conditions, provisions and stipulations of the said Authorities to be performed or observed on the part of the Plaintiffs, be refunded to the Plaintiffs upon the expiration of the term of the said Authorities.

30

38. No part of the said sum of \$1,000.00 paid by the Plaintiffs has been repaid to the Plaintiffs since the expiration of the term of the said Authorities on the 30th day of June, 1970.

40

39. The Government of Queensland threatens and intends to take all such steps as may be necessary to have the areas ~~the-subject-of-the-said applications-for-leases~~ referred to in paragraph 21 hereof declared to be a National Park.

AND the Plaintiffs claim:-

No. 4

(A) By virtue of the allegations of fact contained in paragraphs 1 to 27 hereof inclusive:-

Statement of
Claim as
Amended

(a) specific performance of the promises referred to in paragraph 19 hereof;

—
29th November
1972

(b) if the Court declines to grant specific performance, ~~THIRTEEN-MILLION-THREE HUNDRED-AND-NINETY-FOUR-THOUSAND-FOUR HUNDRED-AND-SEVENTEEN-DOLLARS~~
10 (~~\$13,394,417.00~~) TWELVE MILLION NINE HUNDRED AND SEVENTY TWO THOUSAND SEVEN HUNDRED AND FORTY TWO DOLLARS
(~~\$12,972,742.00~~) damages for breach of contract;

(contd.)

(c) further or alternatively, a declaration that the Plaintiffs are entitled to the grant to them of ~~the said leases~~, the said SML 325 and the said SML 326 and are
20 entitled to the grant to them of a mining lease over the area referred to in paragraph 21(a) hereof for the minerals referred to in the Plaintiffs' application for the said SML 324.

(B) In the alternative to (A) damages for breach of the warranty referred to in paragraph 28(a)(i) hereof.

(C) In the alternative to (A) damages for breach of the warranty referred to in paragraph 28(a)(ii) hereof.

30 (D) In the alternative to (A), (B) and (C) damages for breach of the warranty referred to in paragraph 34 hereof.

(E) An injunction restraining the Defendant, and all other officers, servants and agents of the Government of Queensland, including the Conservator of Forests, from presenting or taking any steps to present to His Excellency the Governor in Council any proposal or recommendation that the areas ~~the subject of the said applications for leases~~ referred to in paragraph 21 hereof be
40 declared a National Park.

(F) An order that the Defendant repay to the Plaintiffs

No. 4

the said sum of \$1,000.00.

Statement of
Claim as
Amended

(G) Such further or other relief, by way of
declarations or otherwise as to the Court may
seem meet.

29th November
1972

Place of Trial - Brisbane.

CHAMBERS McNAB & CO.

(contd.)

CHAMBERS McNAB & CO.,
288 Queen Street, Brisbane.
Solicitors for the First and Second Plaintiffs

The Defendant is required to plead to the
within Amended Statement of Claim within twenty eight
(28) days from the time limited for appearance or
from the delivery of the Amended Statement of Claim
whichever is the later otherwise the Plaintiffs may
obtain judgment against it.

10

CHAMBERS McNAB & CO.

CHAMBERS McNAB & CO.
288 Queen Street, Brisbane.
Solicitors for the First and Second Plaintiffs

This Pleading was settled by Messrs. C.E.K. Hampson
of Queen's Counsel and D.F. Jackson of Counsel.

20

17.

NO. 5

DEMURRER

No. 5

Demurrer

IN THE SUPREME COURT OF QUEENSLAND No.931 of 1972

12th December
1972

B E T W E E N : CUDGEN RUTILE (No.2)
 PPTY. LTD. First Plaintiff
 QUEENSLAND TITANIUM
 MINES PTY. LIMITED
 Second Plaintiff

- and -

GORDON WILLIAM WESLEY
CHALK Defendant

10

D E M U R R E R

Delivered the 12th day of December 1972

The Defendant demurs to the whole of the Plaintiffs' Statement of Claim (save paragraphs 37 and 38 and the claim (F) thereof) and says that the same is bad in law on the following grounds:-

20

1. No relief can be given in this action against the Defendant except in respect of obligations binding upon the Crown or liabilities incurred by the Crown and the Statement of Claim does not, by reason of the grounds hereinafter set out, allege the existence of any material obligation binding upon the Crown or any material liability incurred by the Crown;

2. The Plaintiffs were not on or after 27th June 1966 entitled to an extension of the term of Authority to Prospect No. 270M as amended for that:-

30

- (a) the said Authority to Prospect did not in its true construction confer any such entitlement;
- (b) the Honourable the Minister for Mines was not, by the issue or amendment of that Authority to Prospect or otherwise, empowered to confer any such entitlement.

3. Neither the Mining Acts nor any other Act of the Legislature of Queensland permit the creation of a contractual obligation binding upon the Crown in

No. 5

Demurrer

12th December
1972

(contd.)

terms of the letters referred to in paragraphs 8 and 10 of the Statement of Claim;

4. No offer such as might be acceptance, become binding in contract upon the Crown was made by the letter referred to in paragraph 8 of the Statement of Claim;

5. Neither the letters nor the payment referred to in paragraph 10 of the Statement of Claim created or gave rise to any contractual obligation binding upon the Crown;

10

6. The acts of the Under Secretary for Mines alleged in the Statement of Claim cannot in law give rise to a contract binding upon the Crown in terms of the said letters;

7. Upon a true construction of the Authorities to Prospect numbered 348M and in particular of that term alleged in paragraph 19 of the Statement of Claim, the Plaintiffs are not, in the events alleged in the Statement of Claim, entitled to the grant to them of any or all of the special mineral leases applied for by them, nor is the Governor in Council or the Crown acting otherwise through some officer, servant or agent, obliged to grant or to cause to be granted to the Plaintiffs any or all of the special mineral leases applied for;

20

8. If, upon a true construction of the said Authorities to Prospect numbered 348M, any provision thereof purports to entitle the Plaintiffs to the grant of a special mineral lease or to oblige the Governor in Council or the Crown acting otherwise through some officer, servant or agent to grant or to cause to be granted to the Plaintiffs any such leases as aforesaid, the said term is void and of no effect for that neither the Mining Acts nor any other Act of the Legislature of Queensland authorise or permit the inclusion in an Authority to Prospect of a term which would oblige the Governor in Council or the Crown acting otherwise through some officer, servant or agent, in the events pleaded, to grant or to cause to be granted a special mineral lease over the area comprised in the Authority to Prospect or any part thereof;

30

40

9. The letter referred to in paragraph 28 of the Statement of Claim does not constitute and is not capable of constituting an agreement between the

Plaintiffs and the Crown, and upon the true construction of the said letter, no warranty was given by the Crown to the Plaintiffs either in the terms alleged in sub-paragraph (a) of paragraph 28 of the Statement of Claim or at all;

No. 5

Demurrer

12th December
1972

(contd.)

- 10 10. The acts of the Under Secretary for Mines alleged in the Statement of Claim cannot in law give rise to a warranty in terms of the letter dated the 27th day of July 1966 referred to in paragraph 27 of the Statement of Claim;
11. (a) The Crown has no power to warrant the nature or the extent of the power vested by law in it or in an officer servant or agent of the Crown;
- (b) No officer, servant or agent of the Crown has the Crown's authority to warrant the nature or the extent of the power vested by law in it or in an officer servant or agent of the Crown;
- 20 12. (a) The Crown has no power to warrant the manner in which it will exercise any power vested by law in it or in any officer servant or agent of the Crown to grant or to cause to be granted an Authority to Prospect;
- (b) No officer, servant or agent of the Crown has the Crown's authority to warrant the manner in which it or any officer servant or agent of the Crown will exercise any power vested by law in it or in any officer servant or agent of the Crown to grant or to cause to be granted an Authority to Prospect;
- 30
13. (a) The Crown has no power to warrant the manner in which it or any officer servant or agent of the Crown will exercise any power vested by law in it to grant or to cause to be granted any such right as is referred to either in paragraph 28(a)(ii) or paragraph 34 of the Statement of Claim;
- 40 (b) No officer, servant or agent of the Crown has the Crown's authority to warrant the manner in which it or any officer servant or agent of the Crown will exercise any power vested by law in it or in any officer servant or agent of the Crown to grant or

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Demurrer

12th December
1972
(contd.)

to cause to be granted any such right as is referred to either in paragraph 28(a)(ii) or paragraph 34 of the Statement of Claim;

(b) No officer, servant or agent of the Crown has the Crown's authority to warrant the manner in which it or any officer servant or agent of the Crown will exercise any power vested by law in it or in any officer servant or agent of the Crown to grant or to cause to be granted any such right as is referred to either in paragraph 28(a)(ii) or paragraph 34 of the Statement of Claim;

10

14. Upon a true construction of the Authorities to Prospect (numbered 348M) referred to in paragraph 32 of the Statement of Claim, no warranty was given by the Crown the Minister or by the Crown acting through some other officer, servant or agent to the Plaintiffs in the terms alleged in paragraph 34 of the Statement of Claim;

15. The Governor in Council and the officers, servants and agents of the Crown in taking any step which is necessary to have the area referred to in paragraph 39 of the Statement of Claim declared to be a National Park thereby act in accordance with the powers conferred and discretions reposed in them by statute in that behalf and the Defendant and the officers, servants and agents of the Crown including the Conservator of Forests or any of them cannot be restrained from exercising their respective discretions and powers as aforesaid in accordance with the statute law of Queensland;

20

30

16. The Defendant is not liable to be sued in this action except in respect of an act done by an officer, servant or agent of the Crown who is authorised by law to do acts of the class in question and the Statement of Claim does not allege any act done by such an authorised officer, servant or agent as aforesaid which was not done lawfully and without infringing any rights vested in the Plaintiff.

40

And on other grounds sufficient in law.

The Defendant says that the documents set up and relied upon by the Plaintiffs are in the words and figures contained in the respective schedules to this demurrer as hereinafter set out:

	Authority to Prospect No. 270M	Schedule A	<u>No. 5</u>
	Letter dated 27th June, 1966	Schedule B	Demurrer
	Letter dated 6th July, 1966, together with draft Authority to Prospect	Schedule C	— 12th December 1972
10	Letter dated 19th July, 1966	Schedule D	(contd.)
	Letter dated 21st July, 1966	Schedule E	
	Authority to Prospect No. 348M together with amendments	Schedule F	

Crown Solicitor
Solicitor for the Defendant

20 This pleading was settled by Mr. Brennan of
Queen's Counsel Mr. Dunn of Queen's Counsel and
Mr. Shepherdson of Counsel.

The Plaintiffs are required to set this demurrer
down for argument within ten days, otherwise judgment
will be given against them on the matters demurred to.

Crown Solicitor
Solicitor for the Defendant

SCHEDULE A TO DEMURRER
AUTHORITY TO PROSPECT NO. 270M.

No. 270M.

"The Mining Acts, 1898 to 1955"

Authority to Prospect

Schedule A
to Demurrer
Authority to
Prospect
No. 270M

—
5th July
1965

30 W H E R E A S application has been made
for an Authority to Prospect, for all minerals
(excluding coal and petroleum) on the lands herein-
after described:

NOW THEREFORE, I, THE HONOURABLE ERNEST EVANS,
the MINISTER FOR MINES AND MAIN ROADS FOR THE STATE
OF QUEENSLAND (hereinafter with his successors in
office referred to as "the Minister") by virtue of

No. 5
Schedule A
to Demurrer
Authority to
Prospect
No. 270M

5th July
1965
(contd.)

the powers and authority in me vested under "The Mining Acts, 1898 to 1955" (hereinafter referred to as "the Acts") HEREBY GRANT to CUDGEN RUTILE (NO. 2) PTY. LTD. and QUEENSLAND TITANIUM MINES PTY. LIMITED, in equal undivided shares, (hereinafter referred to as "the Holder") an exclusive Authority to Prospect on the lands more particularly described in the Schedule hereto, exclusive of all areas of surface containing stacked tailings, sands, mullock, slag and similar materials, for the term hereinafter specified upon and subject to the provisions of the Acts and to the following terms, conditions, provisions and stipulations:-

10

1. **TERM:** The term of this Authority to Prospect shall be six (6) months commencing on 1st January, 1965, with a right of renewal as provided in condition 24 hereof for two further periods of one (1) year over reduced areas as detailed in condition 2 hereof.

20

2. **AREA:** Approximately 18 square miles as described in the Schedule hereto.

Notwithstanding anything herein contained or implied there shall be excluded from the lands the subject of this Authority to Prospect at least three (3) square miles on or before 30th June, 1965, and a further five (5) square miles on or before 30th June, 1966.

30

The lands to be excluded shall be specified by the Holder as hereinafter provided and in default of the Holder so specifying such lands shall be specified by the Minister.

The Holder shall before the 30th June, 1965, and 30th June, 1966, by notice in writing to the Minister specify the lands to be excluded by those dates in pursuance of this condition and in default of the Holder so specifying such lands shall be specified by the Minister.

40

3. MARKING OF
BOUNDARY:

If any doubt or dispute should arise as to the position of all or any portion or portions of the boundary or boundaries of the lands comprised within this Authority to Prospect (hereinafter called "the boundary") or if it appears to the Minister to be desirable in the public interest then the Minister may require the holder to survey and mark the boundary and thereupon the Holder shall do so at its own expense.

No. 5

Schedule A
to Demurrer
Authority to
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No. 270M

5th July
1965

(contd.)

Should it so desire the Holder may at any time during the term of this Authority to Prospect survey and mark the boundary.

When the boundary has been surveyed and marked and the boundary as so marked has been accepted as correct by all holders of Authorities to Prospect whose interests are affected by such marking of the boundary and by the Minister then the boundary as so marked shall be deemed to be the boundary of the lands comprised within this Authority to Prospect.

Failing acceptance as aforesaid then the Minister may determine the location of the boundary in relation to the marks and thereupon the boundary as so determined shall be deemed to be the boundary of the lands comprised within this Authority to Prospect.

4. SURVEY OF
BOUNDARY:

The survey of the boundary shall be made by a surveyor registered under "The Land Surveyors Acts, 1908 to 1916".

The survey and the markings of the boundary shall be made in accordance with "The Land Surveyors Acts, 1908 to 1916" and "The Mining Acts, 1898 to 1955". Where the Minister considers that no appropriate or

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1965

(contd.)

clear directions are given under the above Acts then the survey and marking shall be as the Minister may direct.

The Holder shall lodge with the Minister a plan, field notes and computations of the survey all certified as correct by the surveyor who made the survey.

5. **EXCLUSIVE RIGHT TO PROSPECT:** The Holder shall during such term or any renewal thereof have the sole and exclusive right to conduct a special field investigation of the said lands including geological and geophysical examinations aerial and contour surveys drilling and shaft sinking as may from time to time in the opinion of the Holder be appropriate for the purpose of determining the existence or otherwise of all minerals (excluding coal and petroleum) and their extent and nature in the said lands. 10 20
6. **DEPOSIT:** The Holder before the date hereof shall deposit with the Minister a sum of Two hundred and fifty pounds (£250) (the receipt of which sum is hereby acknowledged) to be held by the Minister as a guarantee that the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Holder to be performed or observed will be performed or observed by the Holder. 30
- Subject to the performance and observance by the Holder of the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Holder to be performed or observed, such deposit shall be refunded to the Holder upon the expiration or prior determination (other than by cancellation as hereinafter provided) of this Authority to Prospect. 40

7. RENTAL: The Holder shall pay to the Minister the sum of Twenty-four pounds (£24) (the receipt of which sum is hereby acknowledged) as rental for the lands subject to this Authority to Prospect for the period from 1st January, 1965, to 30th June, 1965.

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Schedule A
to Demurrer
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10 The Holder without demand shall on or before 30th June, 1965, and 30th June, 1966, pay or cause to be paid to the Minister as rental for the lands subject to this Authority to Prospect a sum of one penny (1d.) per acre as rental for the periods from 1st July, 1965, to 30th June, 1966, and 1st July, 1966, to 30th June, 1967, respectively.

5th July
1965

(contd.)

20 8. EXISTING RIGHTS: Subject to the provisions of the Acts this Authority to Prospect shall be subject and without prejudice to all rights, powers, privileges and property of all and every person and corporation under or in respect of any Crown grant, Certificate of Title, lease, claim or mining tenement or of any Authority to Prospect granted to any person under the provisions of "The Petroleum Acts, 1923 to 1962" and "The Coal Mining Acts, 1925 to 1964" now or at any time during the term of this Authority to Prospect and any renewal thereof existing in respect of any part of the said lands.

30

9. WORK AND EXPENDITURE: During the said term and any renewal thereof granted in accordance with condition 24 hereof the Holder shall continuously conduct the special investigation described in condition 5 hereof and such other special investigations as the Minister may approve in writing, and shall during the term of this Authority to Prospect and any renewal thereof bona fide expend or cause to be expended in such special investigations during the periods tabulated not less

40

No. 5

Schedule A
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5th July
1965

(contd.)

than the sums of money set opposite each period, all such sums of money to be measured in Australian currency -

<u>Period</u>	<u>Commencing</u>	<u>Sum</u>
Six months	1st January, 1965	£2,500
One year	1st July, 1965	£7,500
One year	1st July, 1966	£10,000

10. GUARANTEE:

When required by the Minister, the Holder shall, in respect of each period referred to in condition 9 hereof, lodge with the Minister a security or provide a surety acceptable to the Minister for the amount to be expended during such period under the terms of this Authority to Prospect. If at the end of such period the Minister is of the opinion that the Holder has not fulfilled the conditions of the Authority to Prospect in respect of work and expenditure on the Authority to Prospect during such period, the Minister may at his sole discretion forfeit the security or such amount of the security as shall be required by the Minister to satisfy the obligations of the Holder hereunder or may require the surety to pay to the Minister a sum not exceeding the amount to be expended during that period. Any moneys so forfeited shall be paid to Consolidated Revenue. 10
20
30

11. REPORTS:

The Holder shall furnish to the Minister a written report giving full particulars of the special investigations described in conditions 5 and 9 hereof and of the expenditure thereon during each three-monthly period of the term of this Authority to Prospect and any renewal thereof and shall deliver such report to the Minister within one month of the end of such three-monthly period. 40

The Holder shall furnish to the Minister a written report accompanied by relevant maps, sections, charts and other data giving full particulars of the information obtained from all operations in connection with such special investigations during the term of this Authority to Prospect and any renewal thereof and shall deliver such report to the Minister not later than six months after the expiration or prior determination of the term of this Authority to Prospect whichever shall be the sooner or if the term is renewed then six (6) months after the expiration or prior determination of such renewal whichever shall be the sooner.

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5th July
1965

(contd.)

All reports required under this condition shall be in the English language.

12. PROTECTION OF ROADS, RAILWAYS, TELEPHONE AND POWER TRANSMISSION LINES AND CABLES, RADIO AND TELEVISION MASTS AND PIPELINES: This Authority to Prospect shall not be taken to authorise interference with any road, railway, telephone or power transmission line or cable or radio or television mast or pipeline, which shall not be affected in any way by operations performed by virtue of this Authority to Prospect.
13. PROTECTION OF NAVIGATION, HARBOUR OR OTHER WORKS AND FISHING GROUNDS There shall be no interference with navigation, harbour or other works, nor in general terms, with fishing grounds.
14. FORESTS AND NATIONAL PARKS: The Holder shall not enter on any State Forest or Timber Reserve or National Park or Scenic Area for any of the purposes of this Authority to Prospect without the prior

No. 5

Schedule A
to Demurrer
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Prospect
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—
5th July
1965
(contd.)

- written consent of the Conservator of Forests and then only under the conditions fixed by the Conservator of Forests.
15. ABORIGINAL RESERVES: The Holder shall not enter on any Aboriginal Reserve for any of the purposes of this Authority to Prospect without the prior written consent of the Director of Native Affairs and then only under the conditions fixed by the Director of Native Affairs. 10
16. ENTRY ON LAND: The Holder before entering on any land pursuant to this Authority to Prospect shall give to the owner, holder or occupier of such land notice either personally or in such form and in such manner as the Minister shall approve either generally or in a particular case. 20
17. AUTHORITY TO BE PRODUCED: Any agent, servant or employee of the Holder entering upon any land pursuant to this Authority to Prospect shall carry and when lawfully required shall produce a written authorisation issued by the Holder in a form approved by the Minister.
18. ABORIGINAL ARTIFACTS AND HISTORICAL SITES: The Holder shall not damage or interfere with aboriginal artifacts or historical sites without the written permission of the Minister and shall notify the Minister of any such artifacts or sites that the Holder may discover so that they may be properly preserved. 30
19. RIGHT TO ACQUIRE MINING LEASES: Subject to due performance and observance of the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Holder to be performed or observed, the Holder shall be entitled at any time and from time to time during the said term and any renewal thereof to apply for and have granted to it in priority 40

to any person or company mining leases for the minerals specified in condition 5 hereof under the laws for the time being in force over any part or parts of the lands subject to this Authority to Prospect.

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Schedule A
to Demurrer
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10 20. TRANSFER: Any interest in this Authority to Prospect shall not, except with the written approval of the Minister first had and obtained, be capable of being assigned, transferred, mortgaged, charged or created.

5th July
1965

(contd.)

20 21. APPLICATION OF MINES REGULATION ACT: If and so far as "The Mines Regulation Act of 1964" or any future amendments or modifications thereof shall not extend or apply to the works or operations of the Holder on the lands comprised within this Authority to Prospect the Holder shall perform and observe all and every the provisions of the said Acts or any future amendments or modifications thereof in and about all works and operations of the Holder hereunder in the same manner and to the same extent as if such works and operations of the Holder were mines and mining within the meaning of the said Acts.

30 40 22. CANCELLATION ON DEFAULT: If at any time the Holder shall make default in the performance or observance of any of the provisions of the Acts or of any term, condition, provision or stipulation herein contained and on the part of the Holder to be performed or observed and shall fail to remedy such breach or default within three (3) months after written notice by the Minister has been delivered or sent by post to the Holder at its registered office or principal place of business in Queensland calling upon the Holder to remedy such breach or default or if the Holder shall be wound up or if an effective resolution is passed for

No. 5

Schedule A
to Demurrer
Authority to
Prospect
No. 270M

5th July
1965
(contd.)

its winding up (not being in any case a winding up for the purpose of reconstruction or amalgamation) or if the Holder shall assign transfer mortgage charge or create an interest in this Authority to Prospect or attempt to do so without the written consent of the Minister first had and obtained, the Minister may immediately thereupon cancel and determine this Authority to Prospect whereupon any balance of deposit then held by the Minister shall be absolutely forfeited to the Crown. Notice of such cancellation shall be sent by post to the Holder at its registered office or principal place of business in Queensland and shall be deemed to have been received by the Holder at the time when same would in the ordinary course of post have been received by the Holder and the fact that any such notice shall not have been received by the Holder shall not invalidate or affect such cancellation.

23. SURRENDER:

If the Holder shall have performed and observed all of the provisions of the Acts and all of the terms, conditions, provisions and stipulations herein contained and on the part of the Holder to be performed or observed, the Holder may at any time by notice in writing to the Minister of its intention so to do surrender forthwith this Authority to Prospect and thereupon all of the Holder's obligations under this Authority to Prospect shall cease and be at an end except that the obligations of the Holder under conditions 7, 9 and 11 hereof and the rights of the Minister under condition 10 hereof for the period referred to in condition 9 hereof during which such notice is given shall not be affected in whole or in part thereby. Any balance of deposit then held pursuant to condition 6 hereof shall

be refunded by the Minister to the Holder when the Holder has complied with conditions 7, 9 and 11 hereof.

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Schedule A
to Demurrer
Authority to
Prospect
No. 270M

24. PROVISION
FOR
RENEWAL:

If the Holder shall have performed and observed all the provisions of "The Mining Acts, 1898 to 1955" and the terms, conditions, provisions and stipulations herein contained and on the part of the Holder to be performed or observed, the Holder shall at the expiration of the said term with the approval of the Minister but only with such approval be entitled to an extension of this Authority to Prospect for terms of one (1) year from 1st July 1965 and 1st July 1966, upon the same terms and conditions, provisions and stipulations as are contained in this Authority to Prospect.

5th July
1965

(contd.)

SCHEDULE

County of March, Parishes of Cooloola
and Womalah

Area, about 18 square miles

Commencing at a point on the northern boundary of Portion 29, R.1093, Reserve for Fauna Park Purposes, G.G. 1962.3.1291, Parish of Como, being distant about 20 chains west from high water mark of the South Pacific Ocean and bounded thence by that boundary westerly for a distance of about 10 chains (this point being identical with the south-east corner of the western portion of Authority to Prospect No. 199M); by lines, on true bearings, about 15 degrees, about 100 chains; about 290 degrees, 18 chains; about 326 degrees, 80 chains; about 301 degrees, 34 chains; about 259 degrees, 20 chains; about 326 degrees, 12 chains; about 58 degrees, 40 chains; about 122 degrees, 60 chains; about 25 degrees, 16 chains; about 348 degrees, 46 chains; about 31 degrees 30 minutes, 12 chains; about 353 degrees, 27 chains; about 6 degrees 30 minutes, 54 chains; about 10 degrees 45 minutes, 122 chains; about 16 degrees, 76 chains; about 19 degrees 30 minutes, 37 chains; about 21 degrees 30 minutes, 40 chains; about 19 degrees 30 minutes, 260 chains;

No. 5
Schedule A
to Demurrer
Authority to
Prospect
No. 270M

5th July
1965
(contd.)

about 21 degrees, 53 chains; about 25 degrees, 105 chains; about 28 degrees, 45 chains; about 32 degrees, 49 chains; about 328 degrees, 20 chains; about 45 degrees, 45 chains to the high water mark of Wide Bay; by that high water mark easterly to a point distant 95 chains in a direct line; by lines, on true bearings, about 194 degrees 45 minutes, about 236 chains; about 316 degrees 30 minutes, 15 chains; about 202 degrees 30 minutes, 393 chains; about 137 degrees 30 minutes, 10 chains; about 197 degrees 30 minutes, 210 chains; about 307 degrees 30 minutes, 24 chains; about 201 degrees 30 minutes, 40 chains; about 119 degrees, 24 chains; about 197 degrees 30 minutes, 22 chains 50 links; about 289 degrees, 17 chains; about 197 degrees 30 minutes, 140 chains; about 131 degrees, 18 chains; about 195 degrees, about 126 chains to the point of commencement; - exclusive of all existing tenements and holdings under the Mining Acts.

10

20

DATED at BRISBANE this 20th day of January 1965.

(Sgd.) E. EVANS

Minister for Mines and Main Roads

The term of the within Authority to Prospect is renewed for a further period of one (1) year from 1st July, 1965.

Condition 2 of the Authority to Prospect is amended to provide that an area of about 8 square miles shall be excluded from the lands the subject of the Authority to Prospect on or before 30th June, 1966, in lieu of about 3 square miles on or before 30th June, 1965, and about a further 5 square miles on or before 30th June, 1966.

30

Date of Minister's approval: 15th June, 1965.

DATED at BRISBANE this 5th day of July, 1965.

(Sgd.) E.K. HEALY

DEPARTMENT OF MINES

QUEENSLAND

BRISBANE

Under Secretary

Department of Mines

SCHEDULE B TO DEMURRER
LETTER, PLAINTIFFS TO UNDER SECRETARY,
DEPARTMENT OF MINES

No. 5

DEPARTMENT OF MINES
30 JUN 1966

27th June, 1966

No.
QUEENSLAND.

Schedule B
to Demurrer
Letter,
Plaintiffs to
Under-
Secretary,
Department
of Mines

10 The Under Secretary,
Department of Mines,
BRISBANE. Q L D

27th June
1966

Dear Sir,

Authority to Prospect No. 270M
Cudgen Rutile (No.1) Pty.Ltd. and
Queensland Titanium Mines Pty. Limited

We wish to apply for renewal of Authority to Prospect No. 270M for a period of four years to enable our Companies to complete the joint prospecting of the area and assess its mineral potential.

20 2. Our Companies have planned a full scale exploration programme with bore-lines spaced at 1,600 feet and 2,400 feet intervals with bore-holes 100 feet apart, as indicated on the attached plan. The locations of the holes will be surveyed and the collars levelled. Samples of each five feet vertical section of each bore-hole will be analysed in accordance with the Companies' standard procedures. This programme involves the boring of some 1,441 additional holes, the total estimated depth being 75,797 feet. Expenditure will be at a minimum rate of \$25,000 per year over a
30 period of 4 years.

3. The area under consideration contains low grade deposits which can be worked economically on a large scale requiring large capital expenditure. Large areas are needed and only well-organised comprehensive mining and rehabilitation schemes can succeed.

4. In the past, the applicant Companies have complied with the terms and conditions of Authority to Prospect No. 270M.

40 5. The proposed programme will provide an overall assessment of the rutile and zircon deposits in the area, but until this work is completed it will be difficult to delineate the economic deposits in detail and surrender portions of the area. Our

No. 5

Schedule B
to Demurrer
Letter,
Plaintiffs to
Under-
Secretary,
Department
of Mines

27th June
1966
(contd.)

Companies would accordingly request your kind consideration of a proposal to renew the present Authority to Prospect or grant a new Authority over the whole area being considered, for a period of 4 years.

Yours faithfully,

CUDGEN RUTILE (NO.2) PTY. LIMITED

(Sgd.) L.C. WRIGHT

QUEENSLAND TITANIUM MINES PTY.LIMITED

(Sgd.) A.F. GRIFFIN

10

Schedule C
to Demurrer
Letter,
Under
Secretary,
Department
of Mines to
Plaintiffs

6th July
1966

SCHEDULE C TO DEMURRER
LETTER, UNDER SECRETARY, DEPARTMENT OF
MINES TO PLAINTIFFS

CD/ja

270M

Dear Sir,

Re: Application for Authority to Prospect

With reference to your application of 27th June, 1966 for renewal of Authority to Prospect No. 270M, I have been authorised to offer you instead an Authority to Prospect, as indicated in the attached draft, over the Crown Land and private land and reserves (excluding National Parks) in the area at present comprised in Authority to Prospect No. 270M, exclusive of the land held in accordance with the Acts, at the date of proclamation of the lands, by any person under any claim, mining lease or application therefor or Authority to Prospect for the minerals specified in clause 5 of the attached draft.

20

30

This offer lapses twenty-one days from the date of this letter unless I receive by then acceptance of the offer and the sum of \$1,208 (being the deposit and rental for the first year).

Yours faithfully,

(Sgd.) E.K. HEALY

(E.K. HEALY) Under Secretary

CUDGEN RUTILE (NO.2) Pty.Ltd. and Queensland Titanium
Mines Pty. Limited, C/- P.O. Box 8, KINGSCLIFFE

SCHEDULE C TO DEMURRER
DRAFT AUTHORITY

No. 5

No. 348 M

Schedule C
to Demurrer
Draft
Authority

"THE MINING ACTS, 1898 TO 1965"

"THE MINING ON PRIVATE LAND ACTS, 1909 TO 1965"

AUTHORITY TO PROCEED

10 WHEREAS application has been made for an Authority to Prospect for the minerals and on the lands hereinafter described AND WHEREAS by Proclamation issued under the provisions of "The Mining Acts, 1898 to 1965" and "The Mining on Private Land Acts, 1909 to 1965" (hereinafter referred to as "the Acts") the said lands were declared to be exempt from occupation by the holder of a miner's right or business license and not subject to a grant or registration under "The Mining on Private Land Acts, 1909 to 1965" of a mining tenement or a Permit to Enter:

NOW, THEREFORE, I,

20 for the STATE OF
QUEENSLAND (hereinafter with his successors in office referred to as "the Minister") by virtue of the powers and authority in me vested under the Acts HEREBY GRANT to Cudgen Rutile (No.2) Pty. Ltd. and Queensland Titanium Mines Pty. Limited, in equal undivided shares,

30 (hereinafter referred to as "the Holder") an Authority to Prospect on the lands more particularly described in the Schedule hereto, exclusive of all areas of surface containing stacked tailings, sands, mullock, slag and similar materials, for the period hereinafter specified upon and subject to the provisions of the Acts and in particular Section 23A of "The Mining Acts, 1898 to 1965" and Section 12A of "The Mining on Private Land Acts, 1909 to 1965" and to the following terms, conditions, provisions and stipulations:-

40 1. PERIOD: This Authority to Prospect is granted for a period of four years commencing on 1st July, 1966.

2. AREA: Approximately 18 square miles as described in the Schedule hereto.

No. 5.
 Schedule C
 to Demurrer
 Draft
 Authority
 (contd.)

Notwithstanding anything herein contained the area of the lands comprised in this Authority to Prospect shall be reduced by each of the following dates in this clause to not more than the area shown against that date:-

Date	Area
------	------

The Holder shall before each of the above dates in this clause by notice in writing to the Minister specify the lands to be excluded by that date in accordance with this clause. In default of the Holder so specifying then the Minister shall specify such lands

10

3. MARKING OF BOUNDARY: If any doubt or dispute should arise as to the position of all or any portion or portions of the boundary or boundaries of the lands comprised within this Authority to Prospect (hereinafter called "the boundary") or if it appears to the Minister to be desirable in the public interest then the Minister may require the Holder to survey and mark the boundary and thereupon the Holder shall do so at his own expense.

20

Should he so desire the Holder may at any time during the period of this Authority to Prospect survey and mark the boundary.

When the boundary has been surveyed and marked and the boundary as so marked has been accepted as correct by all holders of Authorities to Prospect whose interests are affected by such marking of the boundary and by the Minister then the boundary as so marked shall be deemed to be the boundary of the lands comprised within this Authority to Prospect.

30

Failing acceptance as aforesaid then the Minister may determine the location of the boundary in relation to the marks and thereupon the boundary as so determined shall be deemed to be the boundary of the lands comprised within this Authority to Prospect.

4. SURVEY OF BOUNDARY. The survey of the boundary shall be made by a surveyor registered under "The Land Surveyors Acts, 1908 to 1916".

40

The survey and the marking of the boundary

shall be made in accordance with "The Land Surveyors Acts, 1908 to 1916" and "The Mining Acts, 1898 to 1965". Where the Minister considers that no appropriate or clear directions are given under the above Acts then the survey and marking shall be as the Minister may direct.

No. 5

Schedule C
to Demurrer
Draft
Authority
(contd.)

10 The Holder shall lodge with the Minister a plan, field notes and computations of the survey all certified as correct by the surveyor who made the survey.

20 5. RIGHT TO PROSPECT: The Holder shall during such period have the right to prospect the said lands, including geological and geophysical examinations, aerial and contour surveys, drilling and shaft sinking as may from time to time in the opinion of the Holder be appropriate for the purpose of determining the existence or otherwise of minerals (including gold but excluding coal, mineral oil and petroleum) and their extent and nature in the said lands.

This Authority to Prospect shall not confer any right of ownership to the said minerals upon the Holder and all such minerals shall remain the property of the Crown.

30 6. DEPOSIT: The Holder before the date hereof shall deposit with the Minister a sum of One thousand dollars (\$1,000) (the receipt of which sum is hereby acknowledged) to be held by the Minister as a guarantee that the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Holder to be performed or observed will be performed or observed by the Holder.

40 Subject to the performance and observance by the Holder of the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Holder to be performed or observed, such deposit shall be refunded to the Holder upon the expiration or prior determination (other than by cancellation as hereinafter provided) of this Authority to Prospect.

7. RENTAL: The Holder shall pay to the Minister before each of the dates tabulated below in this clause the sum in Australian currency set opposite such date as rental for the lands subject to this

No. 5
 Schedule C
 to Demurrer
 Draft
 Authority
 (contd.)

Authority to Prospect. Receipt of the rental for the first date tabulated below is hereby acknowledged by the Minister.

Date	Rental
1st July, 1966	£208
1st July, 1967	£208
1st July, 1968	£208
1st July, 1969	£208

8. **EXISTING RIGHTS:** Subject to the provisions of the Acts this Authority to Prospect shall be subject and without prejudice to all rights, powers, privileges and property of all and every person and corporation under or in respect of any Crown grant (including any franchise incorporated in an agreement ratified by Act of Parliament), Certificate of Title, lease, license, permit, claim or mining tenement or of any Authority to Prospect granted to any person under the provisions of "The Petroleum Acts, 1923 to 1962" and "The Coal Mining Acts, 1925 to 1964" now or at any time during the period of this Authority to Prospect existing in respect of any part of the said lands. 10

9. **WORK AND EXPENDITURE:** During the said period the Holder shall continuously prospect the said lands in accordance with the provisions of clause 5 hereof, provided however that the Minister may, on the application of the Holder, approve, in writing, of the Holder conducting such other investigations for such period and subject to such terms and conditions as are set out in such approval, and the Holder shall during each period tabulated below so long as this Authority to Prospect shall remain in operation bona fide expend or cause to be expended in such prospecting and investigations not less than the sum of money set opposite such period, all such sums of money to be measured in Australian currency: - 30

<u>Period</u>	<u>Commencing</u>	<u>Not less than</u>
One year	1st July, 1966	£25,000
One year	1st July, 1967	£30,000
One year	1st July, 1968	£30,000
One year	1st July, 1969	£30,000

Upon the surrender of this Authority to Prospect in accordance with clause 25 hereof the minimum 40

expenditure for the period in which such surrender is made shall be reduced in the ratio that the portion of the period remaining after the date of such surrender bears to the entire period.

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Schedule C
to Demurrer

Draft
Authority

(contd.)

10. GUARANTEE: When required by the Minister, the Holder shall, in respect of the period referred to in clause 9 hereof, lodge with the Minister a security or provide a surety acceptable to the Minister for the amount to be expended during the period under the terms of this Authority to Prospect. If at the end of such period the Minister is of the opinion that the Holder has not fulfilled the terms and conditions of the Authority to Prospect in respect of work and expenditure on the Authority to Prospect during such period, the Minister may at his sole discretion forfeit the security or such amount of the security as shall be required by the Minister to satisfy the obligations of the Holder hereunder or may require the surety to pay to the Minister a sum not exceeding the amount to be expended during that period. Any moneys so forfeited shall be paid to Consolidated Revenue.

11. REPORTS: The Holder shall furnish to the Minister a written report giving full particulars of the prospecting and investigations described in clauses 5 and 9 hereof and of the expenditure thereon during each three-monthly period ending 31st March, 30th June, 30th September and 31st December of the currency of this Authority to Prospect and shall deliver such report to the Minister within one month of the end of such three-monthly period.

The Holder shall furnish to the Minister a written report accompanied by relevant maps, sections, charts and other data giving full particulars of the information obtained from all operations in connection with such prospecting and investigations during each year ending 31st December of the currency of this Authority to Prospect and shall deliver such report to the Minister not later than six months after the expiration of such year or the prior determination of this Authority to Prospect whichever shall be the sooner.

In respect of every area excluded from the lands the subject of this Authority to Prospect in accordance with clause 2 hereof, the Holder shall

No. 5
 Schedule C
 to Demurrer
 Draft Authority
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furnish to the Minister a written report accompanied by relevant maps, sections, charts, and other data giving full particulars of the information obtained from all operations in connection with such prospecting and investigations of the excluded area during the currency of this Authority to Prospect up to the time of such exclusion and shall deliver such report to the Minister before the expiration of six months from the time of such exclusion. Such report may be used as the Minister sees fit.

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Unless otherwise approved by the Minister, all reports required under this clause shall be in the English language, shall give the information required in a clear manner, and shall be suitable for permanent record.

12. PROTECTION OF ROADS, RAILWAYS, TELEPHONE AND POWER TRANSMISSION LINES AND CABLES, RADIO AND TELEVISION MASTS AND PIPELINES: This Authority to Prospect shall not be taken to authorise interference with any road, railway, telephone or power transmission line or cable or radio or television mast or pipeline, which shall not be affected in any way by operations performed by virtue of this Authority to Prospect.

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13. PROTECTION OF NAVIGATION, HARBOUR OR OTHER WORKS AND FISHING GROUNDS: The Holder shall not interfere with any navigation, harbour or other works, or damage fishing grounds, in the exercise of his rights under this Authority to Prospect.

14. PRIVATE LAND: The Holder before entering on any private land pursuant to this Authority to Prospect shall obtain a Permit to Enter in accordance with paragraph (b) of subsection (4) of section 12A of "The Mining on Private Land Acts, 1909 to 1965".

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15. FORESTS AND NATIONAL PARKS: The Holder shall not enter on any State Forest or Timber Reserve or National Park or Scenic Area set apart under "The Forestry Acts, 1959 to 1964" for any of the purposes of this Authority to Prospect without the prior written consent of the Conservator of Forests and then only under the conditions fixed by the Conservator of Forests.

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16. ABORIGINAL RESERVES: The Holder shall not enter on any Aboriginal Reserve set apart under

"The Aborigines' and Torres Strait Islands' Affairs Act of 1965" for any of the purposes of this Authority to Prospect without the prior written consent of the Director of Native Affairs and then only under the conditions fixed by the Director of Native Affairs.

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Schedule C
to Demurrer
Draft
Authority
(contd.)

- 10 17. ENTRY ON LAND: The Holder before entering on any land pursuant to this Authority to Prospect shall give to the owner, holder, trustee or occupier of such land notice either personally or in such form and in such manner as the Minister shall approve either generally or in a particular case.
18. AUTHORITY TO BE PRODUCED: Any agent, servant or employee of the Holder entering upon any land pursuant to this Authority to Prospect shall carry upon his person a written authorisation issued by the Holder in a form approved by the Minister and shall produce such authorisation when required by the owner, holder, trustee or occupier of the said land.
- 20 19. ABORIGINAL ARTIFACTS AND HISTORICAL SITES: The Holder shall not damage or interfere with aboriginal artifacts or historical sites without the written permission of the Minister and shall notify the Minister of any such artifacts or sites that the Holder may discover so that they may be properly preserved.
- 30 20. RIGHT TO ACQUIRE MINING LEASES: Subject to due performance and observance of the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Holder to be performed or observed, the Holder shall be entitled at any time and from time to time during the said period to apply for and have granted to him in priority to any other person or company, a mining lease for the minerals specified in clause 5 hereof under the Acts over any part of the lands comprised within this Authority to Prospect.
- 40 21. TRANSFER: The Holder shall not, except with the written approval of the Minister first had and obtained, assign, transfer, mortgage or charge this Authority to Prospect, or create an interest of any description whatsoever over or with respect to the said Authority to Prospect.
22. APPLICATION OF MINES REGULATION ACT: If and so far as "The Mines Regulation Act of 1964" or

No. 5
 Schedule C
 to Demurrer
 Draft
 Authority
 (contd.)

any future amendments or modifications thereof shall not extend or apply to the works or operations of the Holder on the lands comprised within this Authority to Prospect the Holder shall perform and observe all and every the provisions of the said Act or any future amendments or modifications thereof in and about all works and operations of the Holder hereunder in the same manner and to the same extent as if such works and operations of the Holder were mines and mining within the meaning of the said Act.

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23. CONTINUANCE OF EXISTING PROCLAMATION: The lands described in the Schedule hereto and proclaimed as aforesaid as to be exempt from occupation by the holder of a miner's right or business license and not subject to a grant or registration under "The Mining on Private Land Acts, 1909 to 1965" of a mining tenement or a Permit to Enter (except such portion or portions thereof as shall be excluded from the operations of this Authority to Prospect in manner herein provided) shall continue during the period of this Authority to Prospect to be so proclaimed.

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24. CANCELLATION ON DEFAULT: If at any time the Holder shall make default in the performance or observance of any of the provisions of the Acts or of any term, condition, provision or stipulations herein contained and on the part of the Holder to be performed or observed and shall fail to remedy such breach or default within three (3) months after written notice by the Minister has been delivered or sent by post to the Holder at his registered office or principal place of business in Queensland calling upon the Holder to remedy such breach or default or if the Holder (being a company) shall be wound up or if an effective resolution is passed for its winding up (not being in any case a winding up for the purpose of reconstruction or amalgamation) or if the Holder shall assign transfer mortgage charge or create an interest in this Authority to Prospect or attempt to do so without the written consent of the Minister first had and obtained, the Minister may immediately thereupon cancel and determine this Authority to Prospect whereupon any balance of deposit then held by the Minister shall be absolutely forfeited to the Crown. Notice of such cancellation shall be sent by post to the Holder at his registered office or principal place of business in Queensland and shall be deemed to have been

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received by the Holder at the time when such notice would in the ordinary course of post have been received by the Holder and the fact that any such notice shall not have been received by the Holder shall not invalidate or affect such cancellation.

No. 5

Schedule C
to Demurrer
Draft
Authority

(contd.)

25. SURRENDER: If the Holder shall have performed and observed all of the provisions of the Acts and all of the terms, conditions, provisions and stipulations herein contained and on the part of the Holder to be performed or observed, the Holder may at any time by notice in writing to the Minister of his intention so to do surrender forthwith this Authority to Prospect and thereupon all of the Holder's obligations under this Authority to Prospect shall cease and be at an end except that the obligations of the Holder under Clauses 7, 9 and 11 hereof and the rights of the Minister under clause 10 hereof for the period referred to in clause 9 hereof during which such notice is given shall not be affected in whole or in part thereby. Any balance of deposit then held pursuant to clause 6 hereof shall be refunded by the Minister to the Holder when the Holder has complied with clauses 7, 9 and 11 hereof.

SCHEDULE D TO DEMURRER
LETTER SECOND PLAINTIFF TO UNDER
SECRETARY DEPARTMENT OF MINES

QUEENSLAND TITANIUM MINES PTY. LTD.
(Incorporated in Queensland)

Address all Correspondence to
The Manager, P.O. Box 180, Tin Can Bay.
Via Gympie, Q.

Schedule D
to Demurrer
Letter Second
Plaintiff to
Under
Secretary
Department
of Mines
19th July
1966

Telegraphic Address: "QTMINES", GYMPLE
19th July, 1966
DEPARTMENT OF MINES 21 JUL 1966 No.
Queensland. Telephone Tin Can Bay 9, 28 & 29 (Office)
18 (Works) GM:jb

The Under Secretary,
Department of Mines, Mineral House,
2 Edward Street, Brisbane, Q'ld.

Dear Sir,

RE: Application for Authority to Prospect
Your letter 6.7.'66 Batch No.270M

We have received copies of the above letter and

No. 5

enclosed Draft conditions from Cudgen Rutile (No.2) Pty. Ltd.

Schedule D
to Demurrer
Letter Second
Plaintiff to
Under
Secretary
Department
of Mines

We accept your offer and the conditions as set out and now enclose our cheque for \$604 made up as follows:-

19th July
1966
(contd.)

Our one-half share Deposit (as per Clause 6)	\$500.00
Our one-half share Rental to 30.6.'67 as per Clause 7)	<u>104.00</u>
	<u>\$604.00</u>

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The balance of deposit and rental is to be paid direct to you by Cudgen Rutile (No.2) Pty. Ltd.

Yours faithfully,

Queensland Titanium Mines Pty. Ltd.

(Sgd.)

for: Manager/Director

c.c. O. Paterson
c.c. D.C. Wright (CRNo.2)

Producers of
RUTILE ZIRCON ILMENITE MONAZITE

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Received at MINES DEPT. Receipt No.49359
Fwd. 21 JUL 1966 Amount \$604.00 Initials C.M.

Schedule E
to Demurrer
Letter First
Plaintiff to
Under
Secretary
Department
of Mines

SCHEDULE E TO DEMURRER
LETTER FIRST PLAINTIFF TO UNDER SECRETARY
DEPARTMENT OF MINES

REGISTERED HEAD OFFICE - P.O. Box 8
TELEX AA65922 SYDNEY. KINGSCLIFF, N.S.W.

CUDGEN RUTILE (NO.2) PTY LTD.

Incorporated in Queensland

Department of Mines 21st July, 1966.

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21st July
1966

25 JUL 1965 No.66/2845 QUEENSLAND

The Under Secretary, Department of Mines,
"Mineral House", 2 Edward Street, Brisbane,
Queensland

Dear Sir,

Re: AUTHORITY TO PROSPECT

With reference to your letter of 6th inst.,

offering to this Company and Queensland Titanium Mines Pt. Limited an Authority to Prospect over the area comprised in Authority to Prospect No. 270M, etc., we have to advise that the conditions as detailed in the schedules attached thereto are acceptable to Cudgen Rutile (No.2) Pty. Ltd.

No. 5

Schedule E
to Demurrer
Letter First
Plaintiff to
Under
Secretary
Department
of Mines

We enclose herewith a cheque for \$604-00 being payment of our half-share of the required deposit of \$1,000-00, and first year's rental of \$208-00.

21st July
1966

We understand that Queensland Titanium Mines Pty. Limited have accepted the conditions proposed and have also made payment of their half-share of the required deposit and rental.

(contd.)

Yours faithfully,

For: CUDGEN RUTILE (NO.2) PTY. LTD.,

(Sgd.) D.C. WRIGHT

D.C. WRIGHT

Received at MINES DEPT. Receipt No.49351
Fwd. 25 JUL 1966 Amount \$604.00
Initials BF

ENCL.
c/c The Manager, Q.T. Mines Pty. Ltd.
Tin Can Bay QLD.

SCHEDULE F TO DEMURRER
AUTHORITY TO PROSPECT No.348M

Schedule F
to Demurrer
Authority to
Prospect
No.348M

"THE MINING ACTS, 1898 TO 1965"

"THE MINING ON PRIVATE LAND ACTS, 1909 to 1965"

15th September
1966

AUTHORITY TO PROSPECT

WHEREAS application has been made for an Authority to Prospect for the minerals and on the lands hereinafter described AND WHEREAS by Proclamation issued under the provisions of "The Mining Acts, 1898 to 1965" and "The Mining on Private Land Acts, 1909 to 1965" (hereinafter referred to as "the Acts") the said lands were declared to be exempt from occupation by the holder of a miner's right or business license and not subject to a grant or registration under "The Mining on Private Land Acts, 1909 to 1965" of a mining tenement or a Permit to Enter:

No. 5

Schedule F
to Demurrer
Authority to
Prospect
No. 348M

15th September
1966
(contd.)

NOW, THEREFORE, I, THE HONOURABLE RONALD ERNEST CAMM, the MINISTER FOR MINES AND MAIN ROADS for the STATE OF QUEENSLAND (hereinafter with his successors in office referred to as "the Minister") by virtue of the powers and authority in me vested under the Acts HEREBY GRANT to CUDGEN RUTILE (No.2) PTY. LTD. and QUEENSLAND TITANIUM MINES PTY. LIMITED, in equal undivided shares, (hereinafter referred to as "the Holder") an Authority to Prospect on the lands more particularly described in the Schedule hereto, exclusive of all areas of surface containing stacked tailings, sands, mullock, slag and similar materials for the period hereinafter specified upon and subject to the provisions of the Acts and in particular Section 23A of "The Mining Acts, 1898 to 1965" and Section 12A of "The Mining on Private Land Acts, 1909 to 1965" and to the following terms, conditions, provisions and stipulations:-

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1. PERIOD: This Authority to Prospect is granted for a period of Four (4) years commencing on 1st July, 1966.

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2. AREA: Approximately 18 square miles as described in the Schedule hereto.

Notwithstanding anything herein contained the area of the lands comprised in this Authority to Prospect shall be reduced by each of the following dates in this clause to not more than the area shown against that date:-

Date	Area
.....
.....
.....
.....
.....
.....

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The Holder shall before each of the above dates in this clause by notice in writing to the Minister specify the lands to be excluded by that date in accordance with this clause. In default of the Holder so specifying then the Minister shall specify such lands.

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3. MARKING OF BOUNDARY: If any doubt or dispute should arise as to the position of all or any portion or portions of the boundary or

boundaries of the lands comprised within this Authority to Prospect (hereinafter called "the boundary") or if it appears to the Minister to be desirable in the public interest then the Minister may require the Holder to survey and mark the boundary and thereupon the Holder shall do so at his own expense.

No. 5

Schedule F
to Demurrer
Authority to
Prospect
No. 348M

15th September
1966

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Should he so desire the Holder may at any time during the period of this Authority to Prospect survey and mark the boundary.

(contd.)

When the boundary has been surveyed and marked and the boundary as so marked has been accepted as correct by all holders of Authorities to Prospect whose interests are affected by such marking of the boundary and by the Minister then the boundary as so marked shall be deemed to be the boundary of the lands comprised within this Authority to Prospect.

20

Failing acceptance as aforesaid then the Minister may determine the location of the boundary in relation to the marks and thereupon the boundary as so determined shall be deemed to be the boundary of the lands comprised within this Authority to Prospect.

4. SURVEY OF BOUNDARY: The survey of the boundary shall be made by a surveyor registered under "The Land Surveyors Acts, 1908 to 1916".

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The survey and the marking of the boundary shall be made in accordance with "The Land Surveyors Acts, 1908 to 1916" and "The Mining Acts, 1898 to 1965". Where the Minister considers that no appropriate or clear directions are given under the above Acts, then the survey and marking shall be as the Minister may direct.

The Holder shall lodge with the Minister a plan, field notes and computations of the survey all certified as correct by the surveyor who made the survey.

40

5. RIGHT TO PROSPECT: The Holder shall during such period have the right to prospect the said lands, including geological and geophysical examinations, aerial and contour surveys, drilling and shaft sinking as may from time to time in the opinion of the Holder be appropriate for the purpose of determining the existence or otherwise of minerals (including gold but excluding coal, mineral

No. 5

oil and petroleum) and their extent and nature in the said lands.

Schedule F
to Demurrer
Authority to
Prospect
No. 348M

This Authority to Prospect shall not confer any right of ownership to the said minerals upon the Holder and all such minerals shall remain the property of the Crown.

15th September
1966
(contd.)

6. DEPOSIT: The Holder before the date hereof shall deposit with the Minister a sum of One thousand dollars (\$1,000) (the receipt of which sum is hereby acknowledged) to be held by the Minister as a guarantee that the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Holder to be performed or observed will be performed or observed by the Holder.

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Subject to the performance and observance by the Holder of the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Holder to be performed or observed, such deposit shall be refunded to the Holder upon the expiration or prior determination (other than by cancellation as hereinafter provided) of this Authority to Prospect.

20

7. RENTAL: The Holder shall pay to the Minister before each of the dates tabulated below in this clause the sum in Australian currency set opposite such date as rental for the lands subject to this Authority to Prospect. Receipt of the rental for the first date tabulated below is hereby acknowledged by the Minister.

30

<u>Date</u>	<u>Rental</u>
1st July, 1966	\$208
1st July, 1967	\$208
1st July, 1968	\$208
1st July, 1969	\$208

8. EXISTING RIGHTS: Subject to the provisions of the Acts this Authority to Prospect shall be subject and without prejudice to all rights, powers, privileges and property of all and every person and corporation under or in respect of any Crown grant (including any franchise incorporated in an agreement ratified by Act of Parliament), Certificate of Title, lease, license, permit,

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claim or mining tenement or of any Authority to Prospect granted to any person under the provisions of "Petroleum Acts, 1923 to 1962" and "The Coal Mining Acts, 1925 to 1964" now or at any time during the period of this Authority to Prospect existing in respect of any part of the said lands.

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Schedule F
to Demurrer
Authority to
Prospect
No. 348M

9. WORK AND EXPENDITURE: During the said period the Holder shall continuously prospect the said lands in accordance with the provisions of clause 5 hereof, provided however that the Minister may, on the application of the Holder, approve, in writing, of the Holder conducting such other investigations for such period and subject to such terms and conditions as are set out in such approval, and the Holder shall during each period tabulated below so long as this Authority to Prospect shall remain in operation bona fide expend or cause to be expended in such prospecting and investigations not less than the sum of money set opposite such period, all such sums of money to be measured in Australian currency:-

15th September
1966

(contd.)

<u>Period</u>	<u>Commencing</u>	<u>Not less than</u>
One (1) year	1st July, 1966	\$25,000
One (1) year	1st July, 1967	\$30,000
One (1) year	1st July, 1968	\$30,000
One (1) year	1st July, 1969	\$30,000

Upon the surrender of this Authority to Prospect in accordance with clause 25 hereof the minimum expenditure for the period in which such surrender is made shall be reduced in the ratio that the portion of the period remaining after the date of such surrender bears to the entire period.

10. GUARANTEE: When required by the Minister, the Holder shall, in respect of the period referred to in clause 9 hereof, lodge with the Minister a security or provide a surety acceptable to the Minister for the amount to be expended during the period under the terms of this Authority to Prospect. If at the end of such period the Minister is of the opinion that the Holder has not fulfilled the terms and conditions of the Authority to Prospect in respect of work and expenditure on the Authority to Prospect during such period, the Minister may at his sole discretion forfeit the security or such amount of the security as shall be required by the Minister to satisfy the obligations of the Holder hereunder

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Schedule F
to Demurrer
Authority to
Prospect
No. 348M

15th September
1966

(contd.)

or may require the surety to pay to the Minister a sum not exceeding the amount to be expended during that period. Any moneys so forfeited shall be paid to Consolidated Revenue.

11. REPORTS: The Holder shall furnish to the Minister a written report giving full particulars of the prospecting and investigations described in clauses 5 and 9 hereof and of the expenditure thereon during each three-monthly period ending 31st March, 30th June, 30th September and 31st December of the currency of this Authority to Prospect and shall deliver such report to the Minister within one month of the end of such three-monthly period. 10

The Holder shall furnish to the Minister a written report accompanied by relevant maps, sections, charts and other data giving full particulars of the information obtained from all operations in connection with such prospecting and investigations during each year ending 31st December of the currency of this Authority to Prospect and shall deliver such report to the Minister not later than six months after the expiration of such year or the prior determination of this Authority to Prospect whichever shall be the sooner. 20

In respect of every area excluded from the lands the subject of this Authority to Prospect in accordance with clause 2 hereof, the Holder shall furnish to the Minister a written report accompanied by relevant maps, sections, charts and other data giving full particulars of the information obtained from all operations in connection with such prospecting and investigations of the excluded area during the currency of this Authority to Prospect up to the time of such exclusion and shall deliver such report to the Minister before the expiration of six months from the time of such exclusion. Such report may be used as the Minister sees fit. 30

Unless otherwise approved by the Minister, all reports required under this clause shall be in the English language, shall give the information required in a clear manner, and shall be suitable for permanent record. 40

12. PROTECTION OF ROADS, RAILWAYS, TELEPHONE AND POWER TRANSMISSION LINES AND CABLES, RADIO AND TELEVISION MASTS AND PIPELINES: This Authority to

Prospect shall not be taken to authorise interference with any road, railway, telephone or power transmission line or cable or radio or television mast or pipeline, which shall not be affected in any way by operations performed by virtue of this Authority to Prospect.

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Schedule F
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15th September
1966

(contd.)

10 13. PROTECTION OF NAVIGATION, HARBOUR OR OTHER WORKS AND FISHING GROUNDS: The Holder shall not interfere with any navigation, harbour or other works, or damage fishing grounds, in the exercise of his rights under this Authority to Prospect.

14. PRIVATE LAND: The Holder before entering on any private land pursuant to this Authority to Prospect shall obtain a Permit to Enter in accordance with paragraph (b) of subsection (4) of section 12A of "The Mining on Private Land Acts, 1909 to 1965".

20 15. FORESTS AND NATIONAL PARKS: The Holder shall not enter on any State Forest or Timber Reserve or National Park or Scenic Area set apart under "The Forestry Acts, 1959 to 1964" for any of the purposes of this Authority to Prospect without the prior written consent of the Conservator of Forests and then only under the conditions fixed by the Conservator Forests.

30 16. ABORIGINAL RESERVES: The Holder shall not enter on any Aboriginal Reserve set apart under "The Aborigines' and Torres Strait Islanders' Affairs Act of 1965" for any of the purposes of this Authority to Prospect without the prior written consent of the Director of Native Affairs and then only under the conditions fixed by the Director of Native Affairs.

17. ENTRY ON LAND: The Holder before entering on any land pursuant to this Authority to Prospect shall give to the owner, holder, trustee or occupier of such land notice either personally or in such form and in such manner as the Minister shall approve either generally or in a particular case.

40 18. AUTHORITY TO BE PRODUCED: Any agent, servant or employee of the Holder entering upon any land pursuant to this Authority to Prospect shall carry upon his person a written authorisation issued by the Holder in a form approved by the Minister and shall produce such authorisation when required by the owner, holder, trustee or occupier of the said land.

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Schedule F
to Demurrer
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15th September
1966

(contd.)

19. ABORIGINAL ARTIFACTS AND HISTORICAL SITES: The Holder shall not damage or interfere with aboriginal artifacts or historical sites without the written permission of the Minister and shall notify the Minister of any such artifacts or sites that the Holder may discover so that they may be properly preserved.

20. RIGHT TO ACQUIRE MINING LEASES: Subject to due performance and observance of the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Holder to be performed or observed, the Holder shall be entitled at any time and from time to time during the said period to apply for and have granted to him in priority to any other person or company, a mining lease for the minerals specified in clause 5 hereof under the Acts over any part of the lands comprised within this Authority to Prospect.

10

21. TRANSFER: The Holder shall not, except with the written approval of the Minister first had and obtained, assign, transfer, mortgage or charge this Authority to Prospect, or create an interest of any description whatsoever over or with respect to the said Authority to Prospect.

20

22. APPLICATION OF MINES REGULATION ACT: If and so far as "The Mines Regulation Act of 1964" or any future amendments or modifications thereof shall not extend or apply to the works or operations of the Holder on the lands comprised within this Authority to Prospect the Holder shall perform and observe all and every the provisions of the said Act or any future amendments or modifications thereof in and about all works and operations of the Holder hereunder in the same manner and to the same extent as if such works and operations of the Holder were mines and mining within the meaning of the said Act.

30

23. CONTINUANCE OF EXISTING PROCLAMATION: The lands described in the Schedule hereto and proclaimed as aforesaid as to be exempt from occupation by the holder of a miner's right or business license and not subject to a grant or registration under "The Mining on Private Land Acts, 1909 to 1965" of a mining tenement or a Permit to Enter (except such portion or portions thereof as shall be excluded from the operations of this Authority to Prospect in manner herein provided)

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shall continue during the period of this Authority to Prospect to be so proclaimed.

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15th September
1966

(contd.)

24. CANCELLATION ON DEFAULT: If at any time the Holder shall make default in the performance or observance of any of the provisions of the Acts or of any term, condition, provision or stipulation herein contained and on the part of the Holder to be performed or observed and shall fail to remedy such breach or default within three (3) months after written notice by the Minister has been delivered or sent by post to the Holder at his registered office or principal place of business in Queensland calling upon the Holder to remedy such breach or default or if the Holder (being a company) shall be wound up or if an effective resolution is passed for its winding up (not being in any case a winding up for the purpose of reconstruction or amalgamation) or if the Holder shall assign transfer mortgage charge or create an interest in this Authority to Prospect or attempt to do so without the written consent of the Minister first had and obtained, the Minister may immediately thereupon cancel and determine this Authority to Prospect whereupon any balance of deposit then held by the Minister shall be absolutely forfeited to the Crown. Notice of such cancellation shall be sent by post to the Holder at his registered office or principal place of business in Queensland and shall be deemed to have been received by the Holder at the time when such notice would in the ordinary course of post have been received by the Holder and the fact that any such notice shall not have been received by the Holder shall not invalidate or affect such cancellation.

25. SURRENDER: If the Holder shall have performed and observed all of the provisions of the Acts and all of the terms, conditions, provisions and stipulations herein contained and on the part of the Holder to be performed or observed, the Holder may at any time by notice in writing to the Minister of his intention so to do surrender forthwith this Authority to Prospect and thereupon all of the Holder's obligations under this Authority to Prospect shall cease and be at an end except that the obligations of the Holder under clauses 7, 9 and 11 hereof and the rights of the Minister under clause 10 hereof for the period referred to in clause 9 hereof during which such notice is given shall not be affected in whole or in part thereby.

No. 5

Schedule F
to Demurrer
Authority to
Prospect
No. 348M

15th Setpember
1966

(contd.)

Any balance of deposit then held pursuant to clause 6 hereof shall be refunded by the Minister to the Holder when the Holder has complied with clauses 7, 9 and 11 hereof.

SCHEDULE

County of March, Parishes of Cooloola
and Womalah Area, about 18 square miles

That part of the State of Queensland comprising all Crown and private land within the following boundaries:- Commencing at a point on high-water mark on Wide Bay (being Station 20 on Mines Department Plan Cat. No. Gym. 69) bearing 44 degrees 24 minutes (true) and distant 1 chain 74-2/10 links from a post branded A to P, 199M, 270M, and bounded thence by lines, on true bearings, 100 degrees 34 minutes, 23 chains 5 links; 99 degrees 10 minutes, 17 chains 74-6/10 links; 96 degrees 47 minutes, 12 chains 43-6/10 links; 91 degrees 51 minutes, 17 chains 48-6/10 links; 87 degrees 22 minutes, 17 chains 85 links; 80 degrees 1 minute, 7 chains and 8/10 of a link; 194 degrees 7 minutes, 236 chains; about 316 degrees 30 minutes, about 15 chains; about 202 degrees 30 minutes, about 393 chains; about 137 degrees 30 minutes, about 10 chains; about 197 degrees 30 minutes, about 210 chains; about 307 degrees 30 minutes, about 24 chains; about 201 degrees 30 minutes, about 40 chains; about 119 degrees, about 24 chains; about 197 degrees 30 minutes, about 22 chains 50 links; about 289 degrees, about 17 chains; about 197 degrees 30 minutes, about 140 chains; about 131 degrees, about 18 chains; about 195 degrees to a point on the northern boundary of portion 29, R.1093, Fauna Park Reserve, G.G. 1962.3.1291, parish of Como, about 20 chains west from high-water mark on the Coast of Queensland; by that boundary westerly about 10 chains; again by lines, on true bearings, about 15 degrees, about 100 chains; about 290 degrees, about 18 chains (this point being identical with the south-east corner of the western part of Authority to Prospect 199M); about 326 degrees, about 80 chains; about 301 degrees, about 34 chains; about 259 degrees, about 20 chains; about 326 degrees, about 12 chains; about 58 degrees, about 40 chains; about 122 degrees, about 60 chains; about 25 degrees, about 16 chains; about 348 degrees, about 46 chains; about 31 degrees 30 minutes, about 12 chains; about 353 degrees, about

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27 chains; about 6 degrees 30 minutes, about 54 chains; about 10 degrees 45 minutes, about 122 chains; about 16 degrees, about 76 chains; about 19 degrees 30 minutes, about 37 chains; about 21 degrees 30 minutes, about 40 chains; about 19 degrees 30 minutes, about 260 chains; about 21 degrees, about 53 chains; about 25 degrees, about 105 chains; about 28 degrees, about 45 chains; about 32 degrees, about 49 chains; about 328 degrees, about 20 chains; by a line north-easterly to the point of commencement:- exclusive of the land held in accordance with the Acts at the date of this Authority to Prospect by any person under any claim, mining lease or application therefor, or Authority to Prospect for the minerals specified in clause 5 hereof.

No. 5

Schedule F
to Demurrer
Authority to
Prospect
No. 348M

15th September
1966

(contd.)

DATED at Brisbane this 15th day of September, 1966.

(Sgd.) R.E. CAMM

Minister for Mines and Main Roads.

AUTHORITY TO PROSPECT OVER RESERVES

Under the powers conferred by Section 46 of "The Mining Acts, 1898 to 1965", the Governor in Council on 4th August, 1966 granted to the holder of the within Authority to Prospect an Authority to Prospect over any reserves described in the Schedule hereinafter appearing for the period and subject to the terms and conditions contained in such Authority to Prospect and further subject to the additional terms and conditions following:-

26. VARIATION OF TERMS AND CONDITIONS: The terms, conditions, provisions and stipulations in the within Authority to Prospect shall apply to the reserves described in the Schedule hereinafter appearing as if such reserves had originally been included within the lands comprised in the within Authority to Prospect.

SCHEDULE

All that part of any reserves within the boundaries described in the Schedule to the Authority to Prospect but exclusive of the land held in accordance with the Acts at the date of the within Authority to Prospect by any person under

No. 5

Schedule F
to Demurrer
Authority to
Prospect
No. 348M

15th September
1966
(contd.)

any mining lease or application therefor, or
Authority to Prospect for the minerals specified
in clause 5 hereof.

Date of Minister's approval: 5th July, 1966.

DATED, at Brisbane this 16th day of September,
1966.

DEPARTMENT OF MINES,
QUEENSLAND, BRISBANE. (Sgd.) E.K. HEALY

Under Secretary, Department of
Mines

No. 6

Judgment of
the Full
Court

18th May
1973

NO. 6

JUDGMENT OF THE FULL COURT

IN THE SUPREME COURT OF
QUEENSLAND

No. 931 of 1972

B E T W E E N : CUDGEN RUTILE (NO.2)
PTY. LTD. First Plaintiff
QUEENSLAND TITANIUM
MINES PTY. LIMITED
Second Plaintiff

- and -

GORDON WILLIAM WESLEY
CHALK Defendant

FULL COURT: BEFORE THEIR HONOURS THE CHIEF
JUSTICE MR. JUSTICE STABLE and
MR. JUSTICE HART

The 18th day of May 1973

The Defendant having on the 12th day of
December 1972 demurred to the whole of the
Plaintiffs' Amended Statement of Claim delivered on
the 29th day of November 1972 (save paragraphs 37
and 38 and claim (F) thereof) and the said Demurrer
having been allowed by the Court IT IS THIS DAY
ADJUDGED that the Defendant do recover against the
Plaintiffs his costs of the said Demurrer to be
taxed and the Plaintiffs having accepted the
sum of \$1,256.77 paid into Court by the Defendant

together with accretions in satisfaction of the cause of action referred to in paragraphs 37 and 38 and claim (F) of the said Statement of Claim IT IS THIS DAY FURTHER ADJUDGED that judgment be entered for the Defendant in the action and that the Plaintiffs do recover nothing against the Defendant and that the Defendant do recover against the Plaintiffs his costs of the action to be taxed subject to the provisions of the Order of His Honour Mr. Justice Matthews made in this action on the 22nd day of March 1973.

No. 6

Judgment of the Full Court

18th May 1973

(contd.)

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By the Court

(Sgd.)

Registrar

NO. 10

No.10

ORDER OF THE FULL COURT GRANTING LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

Order of the Full Court granting Leave to Appeal to Her Majesty in Council

IN THE SUPREME COURT OF QUEENSLAND

No.931 of 1972

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IN THE MATTER of the RULES REGULATING APPEALS FROM QUEENSLAND to Her Majesty in Council (Imperial Order in Council of 18th October 1909)

18th May 1973

- and -

IN THE MATTER of Applications for Leave to Appeal to Her Majesty in Council by CUDGEN RUTILE (NO.2) PTY. LTD. and QUEENSLAND TITANIUM MINES PTY. LIMITED from the Judgments of the Full Court of the Supreme Court of Queensland in Action No.931 of 1972 between CUDGEN RUTILE (NO.2) PTY.LTD. and QUEENSLAND TITANIUM MINES PTY. LIMITED

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and GORDON WILLIAM WESLEY CHALK Plaintiffs
Defendant

FULL COURT: BEFORE THEIR HONOURS THE CHIEF JUSTICE MR. JUSTICE HART AND MR. JUSTICE DOUGLAS

The 18th day of May, 1973

UPON MOTION this day made unto the Court by Mr. Hampson

No.10

Order of the
Full Court
granting
Leave to
Appeal to
Her Majesty
in Council

18th May
1973
(contd.)

of Queen's Counsel and Mr. Jackson of Counsel for
CUDGEN RUTILE (NO.2) PTY. LTD. and QUEENSLAND
TITANIUM MINES PTY. LIMITED (hereinafter called "the
Applicants") and

UPON HEARING Mr. Brennan of Queen's Counsel and Mr.
Shepherdson of Counsel for GORDON WILLIAM WESLEY
CHALK (hereinafter called "the Respondent") and
UPON READING the Affidavit of GEOFFREY BRENNAN

GARGETT filed herein by leave on the 18th day of
May, 1973 and the Order of the Full Court made
herein on the 18th day of May, 1973 and upon the
Applicants by their Counsel undertaking that they
will on or before the 18th day of July, 1973 take
all necessary steps for the purpose of procuring
the despatch of the Record to England

THIS COURT DOTH ORDER that the consolidated appeals
to Her Majesty in Council from the several judgments
and orders of the Full Court of the Supreme Court of
Queensland made in the said Action No.931 of 1972
in this Honourable Court on the 18th day of May,
1973:-

(a) whereby the Demurrer delivered by the Respondent
on the 12th day of December, 1972 to the
Applicants' Amended Statement of Claim delivered
on the 29th day of November, 1972 was allowed
and it was adjudged that the Respondent recover
against the Applicants his costs of such
Demurrer to be taxed; and

(b) whereby judgment was ordered to be entered in
such action in favour of the Respondent and
that the Applicants do recover nothing against
the Respondent and the Applicants were ordered
to pay to the Respondent his costs of the action
to be taxed subject to the provisions of the
Order of His Honour Mr. Justice Matthews made in
such action on the 22nd day of March, 1973

be allowed to be made.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that
the costs of and incidental to this motion abide the
event unless Her Majesty in Council should otherwise
order

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that
the costs of and incidental to this motion be paid
by the Applicants in the event of the said
consolidated appeals not being proceeded with or
being dismissed for want of prosecution.

BY THE COURT (Sgd.)

REGISTRAR

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NO. 11

No.11

CERTIFICATE OF REGISTRAR OF SUPREME
COURT OF QUEENSLAND CERTIFYING
TRANSCRIPT OF RECORD OF PROCEEDINGS

Certificate
of Registrar
of Supreme
Court of
Queensland
certifying
Transcript
of Record of
Proceedings

IN THE PRIVY COUNCIL

No.16 of 1973

ON APPEAL FROM THE FULL COURT
OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N : CUDGEN RUTILE (NO.2)
PTY. LTD. (First Plaintiff)
QUEENSLAND TITANIUM
MINES PTY. LIMITED
(Second Plaintiff)
Appellants

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- and -

GORDON WILLIAM WESLEY
CHALK (Defendant)
Respondent

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I, VINCENT GERALD McMAHON, Registrar of the
Supreme Court of Queensland at Brisbane DO HEREBY
CERTIFY that this Record contains a true copy of all
proceedings, judgments and orders had or made in this
matter so far as the same have relation to the cause
in which CUDGEN RUTILE (NO.2) PTY. LTD. and
QUEENSLAND TITANIUM MINES PTY. LIMITED are the
Appellants and GORDON WILLIAM WESLEY CHALK is the
Respondent so far as the same have relation to the
matter of the Judgment of the Full Court of the Supreme
Court of Queensland pronounced in Action No.931 of 1972
on the 18th day of May, 1973, and an Index of Reference
of all papers and documents in the said action (except
documents of a merely formal character or otherwise
immaterial for the purposes of an Appeal to Her Majesty
in Council), and a list of the said formal and
immaterial documents which have been omitted.

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IN FAITH AND TESTIMONY WHEREOF
I have hereunto affixed my Seal
of Office and also the Seal of
the Supreme Court of Queensland in
the State of Queensland the
Seventeenth (17th) day of July
One thousand nine hundred and
seventy-three.

REGISTRAR

IN THE PRIVY COUNCIL

No.16 of 1973

O N A P P E A L
FROM THE FULL COURT OF THE
SUPREME COURT OF QUEENSLAND

B E T W E E N :

CUDGEN RUTILE (NO.2) PTY. LTD. (First Plaintiff)

QUEENSLAND TITANIUM MINES PTY.
LIMITED (Second Plaintiff)

Appellants

- and -

GORDON WILLIAM WESLEY CHALK (Defendant) Respondent

RECORD OF PROCEEDINGS

LOVELL, WHITE & KING,
1 Serjeant's Inn,
Fleet Street,
London, EC4Y 1LP
Solicitors for the Appellants

FRESHFIELDS,
Grindall House,
25 Newgate Street,
London, EC1A 7LB
Solicitors for the Respondent