

IN THE PRIVY COUNCIL

No. 17 of 1973

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

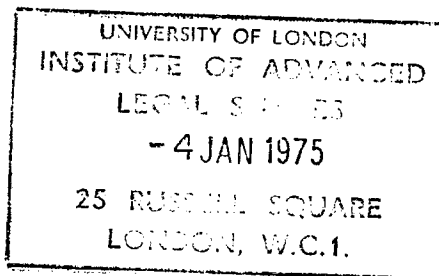
B E T W E E N :

QUEENSLAND TITANIUM MINES PTY. LIMITED (Plaintiff)
Appellant

- and -

GORDON WILLIAM WESLEY CHALK (Defendant) Respondent

RECORD OF PROCEEDINGS



LOVELL, WHITE & KING,
1, Serjeant's Inn,
Fleet Street,
LONDON, EC4Y 1 LP.
Solicitors for the Appellant.

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

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 :

QUEENSLAND TITANIUM MINES PTY. LIMITED (Plaintiff)
Appellant

- and -

GORDON WILLIAM WESLEY CHALK (Defendant) Respondent

RECORD OF PROCEEDINGS

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5.	Summons	20th March 1973
6.	Affidavit of Geoffrey Brenan Gargett with Exhibits A, B and C thereto	19th March 1973

No.	Document	Date
7.	Order of Matthews, J.	22nd March 1973
8.	Certificate for Payment out of Court	5th April 1973
9.	Notice of Motion for Conditional Leave to Appeal to Privy Council	18th May 1973
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15.	Draft Index to Record of Proceedings filed	14th June 1973

IN THE PRIVY COUNCIL

No. 17 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 :

QUEENSLAND TITANIUM MINES PTY.
LIMITED (Plaintiff)

Appellant

- and -

GORDON WILLIAM WESLEY CHALK
(Defendant)

Respondent

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS (ENDORSEMENT OF CLAIM ONLY)

In the Supreme
Court of
Queensland

IN THE SUPREME COURT)
OF QUEENSLAND)

1972 No.930

No. 1

Writ of Summons
26th June 1972

BETWEEN

QUEENSLAND TITANIUM MINES
PTY. LIMITED

Plaintiff

AND

GORDON WILLIAM WESLEY CHALK

Defendant

10

(ENDORSEMENT OF CLAIM ON WRIT OF SUMMONS)

The Plaintiff claims -

- (A) 1. Specific performance of a contract made in the month of July, 1966, between the Plaintiff and the Government of Queensland, whereby it was agreed that the Government of Queensland would grant to the Plaintiff over any part of an area of approximately 40 square miles in the Parishes of Cooloola

In the Supreme
Court of
Queensland

No. 1

Writ of Summons
26th June 1972
(continued)

and Womalah, such mining leases as the Plaintiff 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 Plaintiff is entitled to the grant to it of Special Mineral Lease Applications Nos. 327, 328, 329, 330, 331 and 332 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 Plaintiff the sum of \$1,000.00 paid by the Plaintiff 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.

2/3.

No. 2

REQUEST FOR FURTHER PARTICULARS

In the Supreme
Court of
Queensland

Telephone 24 6446
When telephoning
please ask for
Mr. Campbell
Ref.MJC:MOD

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

9th October 1972

No. 2
Request for
Further
Particulars
9th October
1972

Gentlemen,

10

Re: Action No. 930 of 1972
Queensland Titanium Mines Pty.Ltd.
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 27(a) thereof whether it is alleged that it is contained solely in writing (including the letter dated 27th 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,

(Sgd.) H.E. Carr-Boyd

(H.E.Carr-Boyd)
Crown Solicitor.

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

2/4.

In the Supreme
Court of
Queensland

No. 3

FURTHER PARTICULARS

No. 3

Further
Particulars
17th October
1972

CHAMBERS McNAB & CO.
Solicitors and Notary Public

J.D.C. Story, Notary Public
G.B. Gargett
S.C. Foote, B.A.
K.C. Copp
H. Haggarty
G.D. Misso
J.D. Story, B.A., LL.B.
R.H. Mortimer
M.P. Newell, B.A., LL.B.

Qantas House,
288 Queen Street,
Brisbane,
Queensland 4000.
Box 635 P.O.
Brisbane 4001
Cable and Tele-
graphic Address:
"Loyalty"
Telephone: 2 2905

10

Your Ref. MJC/MOD
Our Ref. GBG/JH

17th October, 1972

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

20

Dear Sir,

re Action No. 930 of 1972
re Queensland Titanium Mines Pty. Ltd.
v. G.W.W. Chalk

We acknowledge receipt of your letter of 9th inst., and advise that the agreement is solely in writing, the writings in question being:-

- (a) the Plaintiff's letter dated 27th June 1966 (referred to in paragraph 6 of the Statement of Claim) :
- (b) the Defendant's letter dated 27th July 1966 (referred to in paragraph 7 of the Statement of Claim) :
- (c) the Plaintiff's letter dated 5th August 1966 (referred to in paragraph 8 of the Statement of Claim).

30

2. We note that paragraph 27(a) of the Statement

2/5.

of Claim may be inaccurate in saying "in the month of July, 1966". Our client proposes to amend the Statement of Claim by deleting those words and inserting in lieu thereof the words:- "in or about the month of August, 1966".

In the Supreme Court of Queensland

No. 3

3. May we assume that you will treat the Statement as so amended for the purposes of your proposed demurrer?

Further Particulars
17th October
1972
(continued)

Yours faithfully,

CHAMBERS McNAB & CO.

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No. 4

STATEMENT OF CLAIM AS AMENDED

IN THE SUPREME COURT
OF QUEENSLAND

No. 930 of 1972

WRIT ISSUED THE TWENTYNINTH DAY OF JUNE, 1972

BETWEEN:

QUEENSLAND TITANIUM MINES PTY. LIMITED

Plaintiff

- and -

GORDON WILLIAM WESLEY CHALK

Defendant

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AMENDED STATEMENT OF CLAIM

Delivered the Twentyninth day of November, 1972.

1. The Plaintiff is a company duly incorporated in the State of Queensland and having its registered office at 81 Ashmore Road, Southport.

2. 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

On the 27th day of June 1966 the Plaintiff was the holder of an Authority to Prospect numbered 199M and duly granted by the Honourable the Minister for Mines in and for the State of Queensland granted

In the Supreme
Court of
Queensland

No. 4

Statement of
Claim as
amended
29th November
1972
(continued)

~~to the Plaintiff an Authority to Prospect~~ under
The Mining Acts 1898 as amended (therein and here-
inafter called "the Acts") ~~numbered 199M.~~

4. The terms of the said Authority to Prospect
were as varied from time to time by agreement
between the Plaintiff and the Honourable the
Minister for Mines.

5. In accordance with the terms of the said
Authority to Prospect as so varied the Plaintiff
was as at the 27th day of June, 1966 entitled to
an extension of the term of the said Authority to
Prospect and all things had been done and all
conditions had been fulfilled necessary to
entitle the Plaintiff to such extension. 10

6. By letter dated the 27th day of June, 1966
the Plaintiff 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.

7. By a letter dated the 27th day of July 1966 20
the Government of Queensland by its servant the
Under-Secretary for Mines made an offer to the
Plaintiff 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. 199M 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 30
(excluding National Parks) in the area at
present comprised in Authority to Prospect
No. 199M 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.

This offer lapses twentyone days from the 40
date of this letter unless I receive by then
acceptance of the offer and the sum of \$1,340
(being the deposit and rental for the first
year) together with your Surrender of all

rights of renewal of Authority to Prospect No. 199M from 1st July, 1966."

In the Supreme
Court of
Queensland

No. 4

Statement of
Claim as
amended
29th November
1972
(continued)

8. The area the subject of such offer was the area the subject of the Authority to Prospect (numbered 199M).

9. Such offer was duly accepted by the Plaintiff by letter dated the 5th day of August 1966 and the said sum of \$1,340.00 (being comprised of \$1,000.00 deposit and \$340.00 rental for the first year) was duly paid.

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10. On the 8th day of September, 1966, and consequent upon the acceptance by the Plaintiff of such offer, His Excellency the Governor in Council granted to the Plaintiff an Authority to Prospect numbered 363M over so much of the said areas as were reserves within the meaning of the Acts.

11. On the 22nd day of November, 1966, and consequent upon the acceptance by the Plaintiff of such offer, the Honourable the Minister for Mines and Main Roads granted to the Plaintiff an Authority to Prospect (also numbered 363M) 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.

20

12. Each of the Authorities to Prospect referred to in paragraphs 10 and 11 hereof:-

(a) was granted to the Plaintiff for a term of 4 years commencing on the 1st day of July, 1966; and

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(b) granted to the Plaintiff 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 Plaintiff 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.

40

13. Certain of the terms of the said Authorities

In the Supreme
Court of
Queensland

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Statement of
Claim as
amended
29th November
1972
(continued)

to Prospect were:-

- (a) that the Plaintiff should pay to the Government of Queensland a rental of \$340.00 per annum in respect of the said area; and
- (b) that the Plaintiff 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 and Main Roads might approve, and should bona fide expend or cause to be expended the sums of money set out hereunder in respect of such prospecting and investigations:-

10

<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
1 year	1st July 1969	\$30,000.00
TOTAL		\$115,000.00

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

20

- (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.

15. In the course of such prospecting operations and investigations, the Plaintiff 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.

30

16. The deposits of minerals referred to in paragraph 15 hereof were such that they could be economically worked at a very great profit to the Plaintiff.

17. At the time of the acceptance by the Plaintiff

of the offer referred to in paragraph 7 hereof and at all material times thereafter, the Government of Queensland knew:-

In the Supreme Court of Queensland

No. 4

Statement of Claim as amended
29th November 1972
(continued)

- (a) that the said area contained large deposits of the minerals referred to in paragraph 15 hereof;
- (b) that such deposits were capable of being economically worked at a very great profit to the Plaintiff;
- 10 (c) that the Plaintiff 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;
- (d) that the Plaintiff intended, during the term of the said Authorities to Prospect, to apply to the Government of Queensland, for the grant to it of mineral leases in respect of the lands containing such deposits.
- 20 18. 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 Plaintiff, the Plaintiff should be entitled at any time and from time to time during the term of such Authorities to apply for and have granted to it in priority to any other person or company a mining lease for inter alia the minerals herein-
- 30 before referred to, over any part of the areas subject to the said Authorities.
19. On the dates set out hereunder the Plaintiff duly applied for the grant to it of Special Mineral Leases Nos. 327, 328, 329, 330, 331 and 332 Gympie District in respect of the said proven minerals by lodging applications therefore in the office of the Mining Warden at Gympie. The dates of lodging such applications were:
- 40 SML 327 - 2nd February, 1970
SML 328 - 2nd February, 1970
SML 329 - 2nd February, 1970
SML 330 - 2nd February, 1970
SML 331 - 2nd February, 1970
SML 332 - 2nd February, 1970

In the Supreme Court of Queensland

No. 4

Statement of Claim as amended 29th November 1972 (continued)

20. (a) The whole of the area applied for by the Plaintiff in each of the said applications (other than SML 329) was within the areas subject to the said Authorities to Prospect, and amounted to a total of approximately 3,070 acres divided as follows:

SML 327	-	830 acres	
SML 328	-	210 acres	
SML 330	-	1,180 acres	
SML 331	-	260 acres	
SML 332	-	590 acres	

10

(b) Part of the area applied for by the Plaintiff in SML-329, namely an area of approximately 930 acres was within the areas subject to the said Authorities to Prospect.

21. 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:-

20

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	

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

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23. After the conclusion of the said hearing and in accordance with the Acts and Regulations thereunder the Mining Warden, on or about the twenty-seventh day of July, 1970, reported to the Minister that each of the leases applied for by the Plaintiff should be granted.

24. The Plaintiff has 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

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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 it to have the grant to it of the said leases insofar as the areas of the same lie within the areas of the said Authorities to Prospect and the Plaintiff has ~~required~~ requested the said Government to grant or procure the grant to it of the same.

In the Supreme
Court of
Queensland

—
No. 4

Statement of
Claim as
amended
29th November
1972
(continued)

10 25. The Government of Queensland has refused and neglected to grant any of the said leases to the Plaintiff and has declared and continues to declare and maintain that the Plaintiff is not entitled to the grant to it of the said leases or any of them or any part of them and has repudiated any obligation to grant or cause to be granted to the Plaintiff the said leases or any of them or any part of them.

20 26. As a result of such refusal the moneys expended by the Plaintiff in carrying out such prospecting and investigations and in making preparations for mining the said deposits of minerals and the costs incurred by the Plaintiff in applying for the said leases have been wasted, the Plaintiff has lost the profits which it would have obtained from the sale of the said minerals when extracted, and the Plaintiff has suffered other loss and damage.

30 27. (a) (Alternatively to the matters referred to in paragraphs 9 to 26 inclusive aforesaid) by an agreement made ~~in the month of July, 1966~~ in or about the month of August, 1966 between the Government of Queensland of the one part and the Plaintiff of the other part the Government of Queensland for the considerations appearing in and by the said letter dated the 27th day of July, 1966 warranted to the Plaintiff:

40 (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 Plaintiff an Authority to Prospect or Authorities to Prospect in accordance with the draft document referred to in the said letter; and

2/12.

In the Supreme
Court of
Queensland

No. 4

Statement of
Claim as
amended
29th November
1972
(continued)

(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 Plaintiff 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 Plaintiff to be performed and observed) to have granted to it a 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. 10

(b) At the time of the making of the agreement referred to in paragraph 27(a) hereof and at all material times thereafter, the Government of Queensland knew:- 20

(i) that the lands referred to in the draft document referred to in paragraph 27(a) hereof contained large deposits of the minerals referred to in paragraph 15 hereof;

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

(iii) that the Plaintiff 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; 30

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

28. All things happened and all times elapsed and all conditions were fulfilled necessary to entitle the Plaintiff to the fulfilment of the said warranties by the Government of Queensland and to the grant to the Plaintiff of the Authority or 40

Authorities to Prospect referred to in paragraph 27(a)(i) hereof and to the grant to the Plaintiff of a mining lease referred to in paragraph 27(a)(ii) hereof.

In the Supreme
Court of
Queensland

No. 4

Statement of
Claim as
amended
29th November
1972
(continued)

29. If it be held that the Government of Queensland was not empowered as set forth in paragraph 27(a)(i) hereof the Plaintiff claims damages for the breach of the warranty referred to in paragraph 27(a)(i) hereof.

10 30. If it be held that the Government of Queensland was not empowered as set forth in paragraph 27(a)(ii) hereof the Plaintiff claims damages for breach of the warranty referred to in paragraph 27(a)(ii) hereof.

20 31. (Alternatively to the matters referred to in paragraphs 9 to 26 inclusive and paragraphs 27 to 30 inclusive aforesaid) on the 20th day of October 1966 His Excellency the Governor in Council purported to grant to the Plaintiff an Authority to Prospect (numbered 363M) 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 22nd day of November 1966 the Honourable the Minister for Mines and Main Roads purported to grant to the Plaintiff an Authority to Prospect (also numbered 363M) 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 Acts 1909 (as amended).

30 32. (a) Each of the Authorities to Prospect referred to in paragraph 31 hereof contained the terms referred to in paragraphs 12, 13 and 18 hereof.

(b) At the time of the granting of each of the Authorities to Prospect referred to in paragraph 31 hereof, the Government of Queensland knew:-

(i) that the areas the subject of the said Authorities to Prospect contained large deposits of the minerals referred to in paragraph 15 hereof;

In the Supreme
Court of
Queensland

No. 4

Statement of
Claim as
amended
29th November
1972
(continued)

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

(iii) that the Plaintiff 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;

(iv) that the Plaintiff intended, during the term of the said Authorities to Prospect, to apply to the Government of Queensland, for the grant to it of mineral leases in respect of the lands containing such deposits. 10

33. By the grant of the said Authorities to Prospect referred to in paragraphs 31 and 32 hereof the Government of Queensland warranted to the Plaintiff that the Government of Queensland was empowered to grant or cause to be granted and would grant or cause to be granted to the Plaintiff 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 Plaintiff to be performed and observed) to have granted to it 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. 20

34. All things happened and all times elapsed and all conditions were fulfilled necessary to entitle the Plaintiff to the fulfilment of the said warranties by the Government of Queensland and to the grant to the Plaintiff of the Mining Lease referred to in paragraph 33 hereof. 30

35. If it be held that the Government of Queensland was not empowered as set forth in paragraph 33 hereof the Plaintiff claims damages for breach of the warranty referred to in paragraph 33 hereof.

36. 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 9 hereof) would, subject to the performance and 40

observance by the Plaintiff 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 Plaintiff, be refunded to the Plaintiff upon the expiration of the term of the said Authorities.

In the Supreme
Court of
Queensland

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No. 4

Statement of
Claim as
amended
29th November
1972
(continued)

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

38. 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 declared to be a National Park.

AND the Plaintiff claims:-

(A) By virtue of the allegations of fact contained in paragraphs 1 to 26 hereof inclusive:-

20 (a) specific performance of the promises referred to in paragraph 18 hereof;

(b) If the Court declines to grant specific performance, ~~FIFTEEN MILLION EIGHT HUNDRED AND FORTY ONE THOUSAND DOLLARS (\$15,841,000.00)~~
FOURTEEN MILLION SEVEN HUNDRED AND THIRTY TWO THOUSAND DOLLARS (\$14,732,000.00)
damages for breach of contract;

30 (c) further or alternatively, a declaration that the Plaintiff is entitled to the grant to it of the said leases insofar as the areas the subject of such lease applications fall within the areas the subject of the said Authorities to Prospect numbered 363M.

(B) In the alternative to (A) damages for breach of the warranty referred to in paragraph 27(a)(i) hereof.

40 (C) In the alternative to (A) damages for breach of the warranty referred to in paragraph 27(a)(ii) hereof.

In the Supreme
Court of
Queensland

No. 4

Statement of
Claim as
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29th November
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(continued)

- (D) In the alternative to (A), (B) and (C) damages for breach of the warranty referred to in paragraph 33 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 (insofar as such areas lie within the areas the subject of the Authorities to Prospect numbered 363M) be declared a National Park.
- (F) An order that the Defendant repay to the Plaintiff the said sum of \$1,000.00.
- (G) Such further or other relief, by way of declarations or otherwise, as to the Court may seem meet.

10

Place of Trial - Brisbane.

20

Chambers McNab & Co.

CHAMBERS McNAB & CO.,
288 Queen Street, Brisbane
Solicitors for the Plaintiff

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 Plaintiff may obtain judgment against it.

30

Chambers McNab & Co.

CHAMBERS McNAB & CO.,
288 Queen Street, Brisbane
Solicitors for the Plaintiff

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

2/17.

No. 5

In the Supreme
Court of
Queensland

DEMURRER

IN THE SUPREME COURT
OF QUEENSLAND

No. 930 of 1972

No. 5

Demurrer
12th December
1972

BETWEEN

QUEENSLAND TITANIUM MINES PTY.
LIMITED

Plaintiff

- and -

GORDON WILLIAM WESLEY CHALK

Defendant

DEMURRER

Delivered the 12th day of December 1972

The Defendant demurs to the Plaintiff's Statement of Claim (save paragraphs 36 and 37 and the claim (F) thereof) and says that the same is bad in law on the following grounds:-

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 Plaintiff was not on or after 27th June 1966 entitled to an extension of the term of Authority to Prospect No. 199M as amended for that:-

(a) the said Authority to Prospect did not on 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, capable of conferring any such entitlement.

3. Neither the Mining Acts nor any other Act of the Legislature of Queensland permits the creation

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Demurrer
12th December
1972
(continued)

of a contractual obligation binding upon the Crown in terms of the letters referred to in paragraphs 7 and 9 of the Statement of Claim;

4. No offer such as might, by acceptance, become binding in contract upon the Crown was made by the letter referred to in paragraph 7 of the Statement of Claim.

5. Neither the letter nor the payment referred to in paragraph 9 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 363M and in particular of that term alleged in paragraph 18 of the Statement of Claim, the Plaintiff is not, in the events alleged in the Statement of Claim, entitled to the grant to it of any or all of the special mineral leases applied for by it, 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 Plaintiff any or all of the special mineral leases applied for. 20

8. If, upon a true construction of the said Authorities to Prospect numbered 363M, any provision thereof purports to entitle the Plaintiff 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 Plaintiff any such leases as aforesaid, then any such provision is void and of no effect for that neither the Mining Acts nor any other Act of the Legislature of Queensland authorise or permits 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 27 of the Statement of Claim does not constitute and is not capable of constituting an agreement between the Plaintiff and the Crown and, upon the true construction of the said letter, no warranty was given by the Crown to the Plaintiff either in the terms alleged in sub-paragraph (a) of paragraph 27 of the Statement of Claim or at all.

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(continued)

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;

20 (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;

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;

30 (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.

40 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 27(a)(ii) or paragraph 33 of the Statement of Claim;

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12th December
1972
(continued)

(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 27(a)(ii) or paragraph 33 of the Statement of Claim.

10

14. Upon a true construction of the Authorities to Prospect (numbered 363M) referred to in paragraph 31 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 Plaintiff in the terms alleged in paragraph 33 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 38 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

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.

30

And on other grounds sufficient in law.

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

40

Authority to Prospect No. 199M Schedule A

2/21.

Letter dated 27.6.1966	Schedule B	In the Supreme Court of Queensland
Letter dated 27.7.1966 including draft Authority to Prospect	Schedule C	<u> </u> No. 5
Letter (August 1966) referred to in paragraph 9 of the Statement of Claim	Schedule D	Demurrer 12th December 1972 (continued)
Authorities to Prospect No. 363M including amendments	Schedule E	

10

Crown Solicitor
Solicitor for the Defendant

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

The Plaintiff is required to set this demurrer down for argument within ten days otherwise judgment will be given against it on the matters demurred to.

20

Crown Solicitor
Solicitor for the Defendant

No. 5

SCHEDULE A to DEMURRER

Authority to Prospect No. 199M

"THE MINING ACTS, 1898 to 1955"

(Section 23A)

AUTHORITY TO PROSPECT

No. 5

Schedule A
to Demurrer
Authority to
Prospect No.
199M
16th July 1962

30

W H E R E A S application has been made for an Authority to Prospect for rutile, zircon, ilmenite and associated minerals on the lands hereinafter described AND WHEREAS by Proclamation issued under the provisions of "The Mining Acts, 1898 to 1955" an area comprising such lands was declared to be exempt from occupation by the holder of a miner's right or business license:

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Queensland

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Schedule A
to Demurrer
Authority
to Prospect
No. 199M
16th July 1962
(continued)

NOW THEREFORE, I. THE HONOURABLE ERNEST EVANS, the MINISTER FOR DEVELOPMENT, MINES, MAIN ROADS AND ELECTRICITY 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 Mining Acts, 1898 to 1955" HEREBY GRANT to MINERAL DEPOSITS PTY. LIMITED (hereinafter referred to as "the Applicant") an exclusive Authority to Prospect on the lands more particularly described in the Schedule hereto for the term hereinafter specified upon and subject to the provisions of "The Mining Acts, 1898 to 1955" and in particular Section 23A of such Acts and to the following terms, conditions, provisions and stipulations:-

1. TERM: The term of this Authority to Prospect shall be one (1) year commencing on the First day of July, 1962.
2. AREA: Approximately 10 square miles as described in the Schedule hereto. 10
3. MARKING OF AREA: The boundaries of the lands comprised within this Authority to Prospect shall be marked by the applicant in such manner as in the opinion of the Warden at Gympie will readily allow of such boundaries being located.
4. EXCLUSIVE RIGHT TO PROSPECT: The applicant shall during such term have the sole and exclusive right to conduct a special investigation of the lands the subject of this Authority to Prospect including geological and geophysical examinations aerial or contour surveys drilling and shaft sinking as may from time to time in the opinion of the Applicant be appropriate for the purpose of determining the possibilities of the area for the production of rutile, zircon, ilmenite and associated minerals. 30
5. DEPOSIT: The Applicant before the issue hereof shall deposit with the Minister a sum of One hundred pounds (£100) to be held by the Minister as a guarantee 40

that the provisions of "The Mining Acts, 1898 to 1955" and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Applicant to be performed or observed will be performed or observed by the Applicant.

In the Supreme
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Schedule A
to Demurrer
Authority
to Prospect
No. 199M
16th July 1962
(continued)

10

Such deposit shall be retained by the Minister until the expiration of the term of this Authority to Prospect and until all the terms, conditions, provisions and stipulations of this Authority to Prospect have been complied with.

20

6. RENTAL: The Applicant shall pay to the Minister the sum of One hundred pounds (£100) (the receipt of which sum is hereby acknowledged) as rental for the lands subject to this Authority to Prospect for the period of one (1) year from 1st July, 1962, to 30th June, 1963.

30

7. EXISTING RIGHTS: Subject to the provisions of "The Mining Acts, 1898 to 1955" 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 now or at any time during the term of this Authority to Prospect existing in respect of any part of the said lands.

40

8. WORK AND EXPENDITURE: During the said term the Applicant shall continuously conduct the special investigation described in Clause 4 hereof, and shall bona fide expend in such special investigation a sum of not less than Three thousand pounds (£3,000) in Australian currency during such term.

9. RETURNS TO BE FURNISHED: The Applicant shall from time to time in respect of each three-monthly period of the said term

In the Supreme Court of Queensland

No. 5

Schedule A to Demurrer Authority to Prospect No. 199M 16th July 1962 (continued)

furnish to the Minister full particulars of the special investigation and expenditure thereon, and shall also immediately upon expiration or prior determination of the term of this Authority to Prospect furnish to the Minister full particulars of the results of all operations in connection with such investigation together with prints of any photographs or contour survey plans obtained during the investigation.

10

10. PROTECTION OF ROADS, RAILWAYS, AND TELEGRAPH LINES AND FORESTRY DEPARTMENT INTERESTS

This Authority to Prospect shall not be taken to authorise the Applicant to carry out any prospecting operations within two (2) chains of the centre-line of any road railway or telegraph line comprised within any part of the said lands and any such road railway or telegraph line shall not be interfered with or affected in any way by operations performed by virtue of this Authority to Prospect.

20

In addition the Applicant shall strictly comply with the requirements of "The Forestry Act of 1959" in respect of fires and damages to bridges and roads, and shall not damage areas of coloured sands contained in the Authority to Prospect.

30

11. RIGHT TO ACQUIRE MINING LEASES:

Subject to due performance and observance of the provisions of "The Mining Acts, 1898 to 1955" and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Applicant to be performed or observed, the Applicant shall be entitled at any time and from time to time during the said term to apply for and have granted to it in priority to any other person or Company mining leases under the laws for the time being in force over any part or parts of the lands subject to this Authority to Prospect.

40

12. TRANSFER: The benefit of 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 or charged.

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10 13. APPLICATION OF MINES REGULATION ACTS: If and so far as "The Mines Regulation Acts, 1910 to 1958" or any future amendments or modifications thereof shall not extend to or apply to the works or operations of the Applicant on the lands comprised within this Authority to Prospect the Applicant 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 Applicant hereunder in the same manner and to the same extent as if such works and operations of the Applicant were mines and mining within the meaning of the said Acts.

Schedule A to Demurrer Authority to Prospect No. 199M 16th July 1962 (continued)

20 14. 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 shall continue during the term of this Authority to Prospect to be so declared as exempt from occupation by the holder of a miner's right or business license.

30 40 15. CANCELLATION ON DEFAULT: If at any time the Applicant shall make default in the performance or observance of any of the provisions of "The Mining Acts, 1898 to 1955" or of any term, condition, provision or stipulation herein contained and on the part of the Applicant to be performed or observed and shall fail to remedy such breach or default within one (1) month after written notice by the Minister has been delivered or sent by post to the Applicant at its registered office or principal place of business in Queensland calling upon the Applicant

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No. 5

Schedule A
to Demurrer
Authority
to Prospect
No. 199M
16th July 1962
(continued)

to remedy such breach or default or if the Applicant 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 Applicant shall assign transfer mortgage or charge the benefit of 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 Applicant at its registered office or principal place of business in Queensland and shall be deemed to have been received by the Applicant at the time when same would in the ordinary course of post have been received by the Applicant and the fact that any such notice shall not have been received by the Applicant shall not invalidate or affect such cancellation. 10 20

16. SURRENDER
AND
ACCEPTANCE
THEREOF:

The Applicant provided it shall have duly 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 Applicant to be performed or observed may by one (1) month's notice in writing to the Minister surrender this Authority to Prospect at any time, and at the expiration of the period specified in such notice all its obligations shall cease and be at an end and any balance of deposit then held shall be refunded by the Minister to the Applicant. 30 40

2/27.

SCHEDULE

County of March, Parishes of Como,
Cooloola, Laguna and Womalah

Area, about 10 square miles

In the Supreme
Court of
Queensland

No. 5

Schedule A
to Demurrer
Authority
to Prospect
No. 199M
16th July 1962
(continued)

10

20

Commencing at the southernmost corner of Portion 4, R.699, Lighthouse Reserve, Parish of Cooloola, and bounded thence in a southerly direction by high-water mark of the South Pacific Ocean to a point bearing 177 degrees 30 minutes (true) and distant about 67 chains from a Commonwealth Resection Point No. 2c, 323 feet, in the Parish of Laguna, thence by lines, on true bearings, 274 degrees 25 chains; 4 degrees 423 chains; 7 degrees 270 chains; 6 degrees 136 chains; 302 degrees 18 chains; 8 degrees 30 minutes 140 chains; 100 degrees 17 chains; 8 degrees 30 minutes 22 chains 50 links; 290 degrees 24 chains; 12 degrees 30 minutes 40 chains; 118 degrees 30 minutes 24 chains; 8 degrees 30 minutes 210 chains; 308 degrees 30 minutes 10 chains; 13 degrees 30 minutes 393 chains; 127 degrees 30 minutes 15 chains; 5 degrees 45 minutes about 236 chains to high water mark of Wide Bay; thence by that high water mark north-easterly to the westernmost corner of the aforementioned Portion 4; thence by the south-western boundary of that portion to the point of commencement; - exclusive of all existing holdings and tenements under the Mining Acts.

DATED at BRISBANE this sixteenth day of July, 1962.

30

(Sgd.) E. EVANS

Minister for Development,
Mines, Main Roads and
Electricity.

By Proclamations dated 11th October 1962 (G.G.1962.3.483 and G.G.1962.3.484) the Proclamation dated 14th June 1962 (G.G.1962.2.1069) was revoked and the description of the area of the within Authority to Prospect is as shown in the schedule hereto, and as edged red on Map 2.

2/28.

In the Supreme
Court of
Queensland

No. 5

Schedule A
to Demurrer
Authority
to Prospect
No. 199M
16th July 1962
(continued)

AMENDED SCHEDULE

County of March, parishes of Como,
Cooloola, Laguna and Womalah

Area, about 10 square miles.

Commencing at the southernmost corner of
portion 4, R.699, Lighthouse Reserve, parish of
Cooloola, and bounded thence in a southerly
direction by high water mark of the South Pacific
Ocean to a point bearing 168 degrees 30 minutes and
distant about sixty-seven chains from a Commonwealth 10
Resection Point No. 2c (Mt. Seawah), parish of
Laguna, thence by lines about 274 degrees, twenty-
five chains; about 4 degrees, four hundred and
twenty-three chains; about 7 degrees, two hundred
and seventy chains; about 6 degrees, one hundred
and thirty-six chains; about 302 degrees, eighteen
chains; about 8 degrees 30 minutes, one hundred and
forty chains; about 100 degrees, 17 chains; about 8
degrees 30 minutes, twenty-two chains fifty links;
about 290 degrees, twenty-four chains; about 20
12 degrees 30 minutes, forty chains; about
118 degrees 30 minutes, twenty-four chains.
about 308 degrees 30 minutes, ten chains; about
13 degrees 30 minutes, three hundred and ninety-
three chains; about 127 degrees 30 minutes, fifteen
chains; about 5 degrees 45 minutes, about two
hundred and thirty-six chains to high water mark
of Wide Bay, thence by that high water mark north-
easterly to the westernmost corner of the afore-
mentioned portion 4; thence by the south-western 30
boundary of that portion to the point of commence-
ment:- exclusive of all existing holdings and
tenements under the Mining Acts.

Date of Ministers Approval: 11th October, 1962.

Dated at Brisbane this nineteenth day of February,
1962.

(Sgd.) E.K. HEALY

Under Secretary,
Department of Development and Mines.

2/29.

Consequent upon the addition of an area of about 37,770 acres, the area of the within Authority to Prospect is now about 44170 acres as described in Amended Schedule on page 2/28 hereof and Schedule No. 1 hereunder and as shown in red on Map No. 1 and in blue on Map No. 3 attached hereto.

Date of Ministers approval: 24th January, 1964

DATED at Brisbane this twentysixth day of March, 1964.

In the Supreme Court of Queensland

No. 5

Schedule A to Demurrer Authority to Prospect No. 199M 16th July 1962 (continued)

10 Department of Mines
QUEENSLAND
BRISBANE

(Sgd.) G. W. COOK

Acting Under Secretary
Department of Mines.

SCHEDULE NO. 1

County of March
Parishes of Cooloola and Womalah

Area: about 37,770 acres

20 Commencing at a point on the left bank of the Noosa River being at the south west corner of R.451, State Forest, G.G.1925.1.2085, and bounded thence by the southern boundary of that Reserve easterly to the western boundary of Special Mineral Lease Application 284 (Gympie); thence by that boundary and the western and northern boundaries of Special Mineral Lease Application 283 (Gympie) north easterly and easterly to the north west corner of Authority to Prospect 199M S.G.1962.3.483; thence by the northern boundary of 199M to its northernmost corner; thence by a line bearing about 322°30' (true) to low water mark of Wide Bay, thence by that low water mark generally north westerly to a point due east of the Carlo Commonwealth Trigonometrical Station (416 feet); thence by lines, on true bearings, 270° about 2 miles 8 chains; 176°30' about 2 miles 68 chains, 160°15' about 2 miles; 202° to the left bank of Tewah Creek; thence by that bank and the left bank of the Noosa River downwards to the point of commencement:- exclusive
30
40 of all existing holdings and tenements under the Mining Acts.

In the Supreme
Court of
Queensland

No. 5

Schedule A
to Demurrer
Authority
to Prospect
No. 199M
16th July 1962
(continued)

The term of the within Authority to Prospect is extended for a further period of one (1) year from 1st July, 1963 to 30th June, 1964 over an area of about 44,170 acres and subject to the following special conditions:-

- (a) Rental of 1d per acre per annum
- (b) Minimum expenditure for the period - £5,000
- (c) All other conditions of previous term shall apply.

Date of Minister's approval: 24th January, 1964. 10

DATED at Brisbane this twentysixth day of March, 1964.

DEPARTMENT OF MINES
QUEENSLAND
BRISBANE.

(Sgd.) G. W. COOK

Acting Under Secretary
Department of Mines.

The following condition is added to the within Authority to Prospect in respect of Forests and National Parks:-

20

"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 written consent of the Conservator of Forests and then only under the conditions fixed by the Conservator of Forests."

Date of Minister's approval: 24th January, 1964.

DATED at BRISBANE this twentysixth day of March, 1964.

30

DEPARTMENT OF MINES
QUEENSLAND
BRISBANE

(Sgd.) G. W. COOK

Acting Under Secretary
Department of Mines.

The term of the within Authority to Prospect is extended for a further period of one (1) year as from 1st July, 1964, in respect of an area of about 44,170 acres, subject to the following special conditions:-

40

2/31.

- (a) Rental for the period - 1d. per acre.
- (b) Expenditure for the period - £7,500.
- (c) Other conditions for previous term to remain.

In the Supreme
Court of
Queensland

Date of Minister's approval: 26th June, 1964.

No. 5

DATED at Brisbane this 23rd day of July, 1964.

Schedule A
to Demurrer
Authority
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No. 199M
16th July 1962
(continued)

DEPARTMENT OF MINES
QUEENSLAND
BRISBANE.

(Sgd.) G. W. COOK

Acting Under Secretary
Department of Mines.

10

Consequent upon amendment of boundaries, the area of the within Authority to Prospect is now about 61 square miles as described in Amended Schedule hereunder and as shown in pink on Map No. 4 attached hereto.

Date of Minister's approval: 7th December, 1964.

DATED at BRISBANE this Twenty-eighth day of January, 1965.

DEPARTMENT OF MINES
QUEENSLAND
BRISBANE

(Sgd.) E.K. HEALY

Under Secretary
Department of Mines.

20

AMENDED SCHEDULE

County of MARCH

Parishes of COOLOOLA and WOMALAH

Area: About 61 square miles

Commencing at the southernmost corner of portion 4, R.699, Lighthouse Reserve, parish of COOLOOLA, and bounded thence in a sotherly direction by high water mark of the South Pacific Ocean to the north-east corner of portion 29, R.1093, Reserve for Fauna Park Purposes, GG.1962.3.1291, parish of COMO; by the northern boundary of that portion westerly about 20 chains; by lines on true bearings about 15°, about 126 chains; about 311°, 18 chains, about 17°30', 140 chains; about 109°, 17 chains; about 17°30', 22

30

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Schedule A
to Demurrer
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No. 199M
16th July 1962
(continued)

chains 50 links; about 299°, 24 chains; about
21°30', 40 chains; about 127°30', 24 chains;
about 17°30', 210 chains; about 317°30', 10 chains;
about 22°30', 393 chains; about 130°30', 15 chains;
about 14°45', about 236 chains to high water mark
of Wide Bay; by that high water mark generally
westerly to a point distant 95 chains in a direct
line; by lines on true bearings about 225°, 45 chains; ab
about 148°, 20 chains; about 212°, 49 chains;
about 208°, 45 chains; about 205°, 105 chains; 10
about 201°, 53 chains; about 1999°30', 280 chains;
about 201°30', 40 chains; about 199°30', 37 chains;
about 196°, 76 chains; about 190°45', 122 chains;
about 186°30', 54 chains; about 173°, 27 chains;
about 211°30', 12 chains; about 168°, 46 chains;
about 205°, 16 chains; about 302°, 60 chains;
about 238°, 40 chains; about 146°, 12 chains;
about 79°, 20 chains; about 121°, 34 chains;
about 146°, 80 chains; about 110°, 18 chains;
about 195°, about 100 chains to the northern 20
boundary of portion 29, R.1093, Reserve for Fauna
Park Purposes GG.1962.3.1291, parish of COMO; by
that northern boundary westwards to the left bank
of the Noosa River; by that bank and the left bank
of Tewah Creek upwards to a point 544 chains in a
direct line true bearing about 2°; by lines on
true bearings about 22°, 392 chains; about 340°15',
160 chains; about 356°30', 228 chains; about 90°
to low water mark of Wide Bay at a point due east
of the Carlo Commonwealth Trigonometrical Station 30
(416 ft.); by that low water mark generally
easterly to a point north--west of the point of
commencement; by a line and the southern boundary
of the aforementioned portion 4, Lighthouse Reserve,
R.699, parish of COOLOOLA, to the point of commence-
ment; exclusive of all existing holdings and
tenements under the Mining Acts.

The terms of the within Authority to Prospect
have been varied as from 1st January 1965 as follows:

- (a) Area: about 61 square miles. 40
- (b) Rights of Renewal: 12 months from 1st July, 1965
over about 40 square miles.
12 months from 1st July, 1966
over about 25 square miles.
- (c) Rental: 1d. per acre.

(d) Expenditure: 1st July, 1965 to 30th June 1966 - £10,000
1st July, 1966 to 30th June 1967 - £10,000

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(e) Rental Refund: 1st January 1965 to 30th June 1965 - £10.11.6.

Schedule A to Demurrer Authority to Prospect No. 199M 16th July 1962 (continued)

Date of Minister's approval: 7th December 1964.

DATED at BRISBANE this Twenty-eighth day of January, 1965.

10 DEPARTMENT OF MINES
QUEENSLAND
BRISBANE

(Sgd.) E. K. HEALY

Under Secretary
Department of Mines.

The Minister on 19th June 1965 gave written approval to the ~~assignment~~/transfer/~~mortgage~~/~~charge~~ of the benefit of this Authority to Prospect purported to be effected by document dated 17th February 1965 between Mineral Deposits Pty. Limited and Queensland Titanium Mines Pty. Ltd.
20 Dated at Brisbane this Nineteenth day of July.

DEPARTMENT OF MINES
QUEENSLAND
BRISBANE.

(Sgd.) E. K. HEALY

Under Secretary
Department of Mines.

30 The term of the within Authority to Prospect is renewed for a further period of twelve (12) months from 1st July, 1965 over an area of about 40 square miles as described in Amended Schedule hereunder and as shown in pink on Map No. 5 attached hereto.

Date of Minister's approval: 10th August, 1965

DATED at BRISBANE this Twentysecond day of October, 1965.

DEPARTMENT OF MINES
QUEENSLAND
BRISBANE

(Sgd.) E.K. HEALY

Under Secretary,
Department of Mines.

In the Supreme
Court of
Queensland

AMENDED SCHEDULE

County of MARCH

No. 5

Parishes of COOLOOLA and WOMALAH

Schedule
to Demurrer

Area: About 40 square miles

Authority
to Prospect
No. 199M
16th July 1962
(continued)

Commencing at the southernmost corner of Portion 4, R.699, Lighthouse Reserve, parish of COOLOOLA and bounded thence by high-water mark of the South Pacific Ocean generally southerly to the north-east corner of Portion 29, R.1093, Reserve for Fauna Park Purposes, G.G.1962.3.1291, parish of COMO; by the northern boundary of that portion westerly about 20 chains; by lines on true bearings about 15°, about 126 chains; about 311°, about 18 chains; about 17° 30', about 140 chains. about 109°, about 17 chains; about 17° 30', about 22 chains 50 links. about 299°, about 24 chains; about 21° 30', about 40 chains; about 127° 30', about 24 chains; about 17° 30', about 210 chains; about 317° 30', about 10 chains; about 22° 30', about 393 chains; about 136° 30', about 15 chains; about 14° 45', about 236 chains to high-water mark of Wide Bay; by that high-water mark generally westerly to a point distant 95 chains in a direct line; by lines on true bearings about 225°, about 45 chains; about 148°, about 20 chains; about 212°, about 49 chains; about 208°, about 45 chains; about 205°, about 105 chains; about 201°, about 53 chains; about 199° 30', about 260 chains; about 201° 30', about 40 chains; about 199° 30', about 37 chains; about 196°, about 76 chains; about 190° 45', about 122 chains; about 186° 30', about 54 chains; about 173°, about 27 chains; about 211° 30', about 12 chains; about 168°, about 46 chains; about 205°, about 16 chains; about 302°, about 60 chains; about 238°, about 40 chains; about 146°, about 12 chains; about 79°, about 20 chains; about 121°, about 34 chains; about 146°, about 80 chains; about 278°, about 128 chains; about 8°, about 112 chains; about 11° 30', about 312 chains, about 19° to the southern boundary or Portion 274, parish of COOLOOLA; by the southern boundary of that portion and its continuation westerly about 80 chains; by lines on true bearings about 197°, about 160 chains; about 279°, about 88 chains; about 22°, about 416 chains; about 340°, 15', about 160 chains; about 356° 30', about

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228 chains; by a line to low-water mark of Wide Bay at a point due east of the Carlo Commonwealth Trigonometrical Station; by that low-water mark generally easterly to its intersection with the north-western extension of the southern boundary of the aforementioned Portion 4, parish of COOLOOLA; by a line and that boundary south-easterly to the point of commencement:- exclusive of all existing mining tenements and holdings under "The Mining Acts, 1898 to 1965", and all existing mining tenements and permits to enter under "The Mining on Private Land Acts, 1909 to 1965".

In the Supreme Court of Queensland

No. 5

Schedule A to Demurrer Authority to Prospect No. 199M 16th July 1962 (continued)

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No. 5

SCHEDULE B TO DEMURRER - Letter,
Plaintiff to Under-Secretary,
Department of Mines

No. 5

Schedule B to Demurrer Letter, Plaintiff to Under-Secretary, Department of Mines 27th June 1966

DEPARTMENT OF MINES
30 JUN 1966

20

No.
QUEENSLAND

27th June, 1966

The Under Secretary,
Department of Mines,
BRISBANE QLD.

Dear Sir,

Authority to Prospect No. 199M
Queensland Titanium Mines Pty. Limited

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We wish to apply for renewal of Authority to Prospect No. 199M for a period of four years to enable our Company to complete its present comprehensive prospecting of the area.

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2. We propose to complete the exploration indicated on the attached plan. The area has been studied geologically and bore-lines have been located to intersect the features of possible economic potential. Field and laboratory work will be carried out in accordance with the Company's standard procedure. Some 1,050 holes will be sunk. The total depth to be drilled will be 52,500 feet and over 10,500 samples will be analysed. In addition, the possibility of economic mineralisation occurring at depths of over 100 feet will be

2/36.

In the Supreme
Court of
Queensland

No. 5

Schedule B
to Demurrer
Letter,
Plaintiff to
Under
Secretary,
Department
of Mines
27th June 1966
(continued)

determined using a drill rig now being tested by an associated company. Expenditure on this programme will be a minimum of \$25,000 annually over a 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.

10

4. In the past, the Company has complied with the terms and conditions of Authority to Prospect No. 199M, as modified with your approval.

5. The Company has already commenced mining operations in the adjacent Tin Can Bay area and has spent over \$2,000,000 in capital expenditure in the last two years. It is currently employing up to 100 employees and is producing at the rate of 15,000 tons each of rutile and zircon annually.

6. We are fully cognisant of our responsibilities under the terms of this Authority to Prospect and will make every effort to comply with its terms and conditions. In the present circumstances, we wish to request your kind consideration to renewal of Authority to Prospect No. 199M or the grant of a new Authority for a period of 4 years to enable our present exploration programme to be completed and assist in the continued activities of our current operation in this relatively undeveloped area of Queensland. The Company would also surrender or not request renewal in respect of the area of Teewah Coloured Sands comprising part of the frontal area, as shown on the attached plan.

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Yours faithfully,

QUEENSLAND TITANIUM MINES PTY.
LIMITED

(Sgd.) A. Griffin

A. Griffin (Agent)

2/37.

No. 5

SCHEDULE C TO DEMURRER - Letter, Under
Secretary, Department of Mines to Plaintiff

In the Supreme
Court of
Queensland

No. 5

CHS/lk

27th July, 1966.

Schedule C
to Demurrer
Letter,
Under
Secretary,
Department
of Mines to
Plaintiff
27th July 1966

199M

Dear Sir,

10 With reference to your application of 27th June, 1966 for renewal of Authority to Prospect No. 199M, 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. 199M, 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 therefore or Authority to Prospect for the minerals specified in clause 5 of the attached draft.

20 This offer lapses 21 days from the date of this letter unless I receive by then acceptance of the offer and the sum of \$1340 (being the deposit and rental for the first year), together with your surrender of all rights of renewal of Authority to Prospect No. 199M from 1st July, 1966.

Yours faithfully,

(Sgd.) E. K. HEALY

(E. K. HEALY)
Under Secretary.

ENCLOSURE

30 The Manager,
Queensland Titanium Mines
Pty. Ltd.
TIN CAN BAY,
VIA GYMPLE.

In the Supreme
Court of
Queensland

No. 5

SCHEDULE C to Demurrer,
Draft Authority

No. 5

Schedule C
to Demurrer
Draft
Authority

No. 363 M

"THE MINING ACTS, 1898 TO 1965"
"THE MINING ON PRIVATE LAND ACTS, 1909 to 1965"

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: 10

NOW, THEREFORE, I

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 20

Queensland Titanium Mines Pty. Limited

(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:- 30

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

2. AREA: Approximately 40 square miles as described in the Schedule hereto.

In the Supreme Court of Queensland

No. 5

Schedule C to Demurrer Draft Authority (continued)

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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10 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.

20 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.

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

30 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.

40 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.

In the Supreme
Court of
Queensland

No. 5

Schedule C
to Demurrer
Draft
Authority
(continued)

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 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.

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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. 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.

20

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.

6. DEPOSIT: The Holder before the date hereof shall deposit with the Minister a sum of one thousand dollars (\$1,000.00) (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

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as hereinafter provided) of this Authority to Prospect.

In the Supreme
Court of
Queensland

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No. 5

Schedule C
to Demurrer
Draft
Authority
(continued)

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.

10	Date	Rental
	1st July, 1966	£340.00
	1st July, 1967	£340.00
	1st July, 1968	£340.00
	1st July, 1969	£340.00

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 (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.

30 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
40 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:-

In the Supreme Court of Queensland	Period	Commencing	Not less than
No. 5 Schedule C to Demurrer Draft Authority (continued)	One year	1st July, 1966	\$25,000
	" "	1st July, 1967	\$30,000
	" "	1st July, 1968	\$30,000
	" "	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

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. 20 30

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. 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 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 the Supreme
Court of
Queensland

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No. 5

Schedule C
to Demurrer
Draft
Authority
(continued)

10 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.

20 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.

30 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: 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.

40 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".

In the Supreme
Court of
Queensland

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No. 5

Schedule C
to Demurrer
Draft
Authority
(continued)

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.

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. 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. 20

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. 30

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 40

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.

In the Supreme
Court of
Queensland

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No. 5

Schedule C
to Demurrer
Draft
Authority
(continued)

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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.

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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.

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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 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

In the Supreme
Court of
Queensland

—
No. 5

Schedule C
to Demurrer
Draft
Authority
(continued)

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.

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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.

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2/47.

No. 5

SCHEDULE D to Demurrer - Letter, Plaintiff
to Under Secretary, Department of Mines

In the Supreme
Court of
Queensland

No. 5

QUEENSLAND TITANIUM MINES PTY. LTD.

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

P.O. Box 180,
TIN CAN BAY QLD.

DEPARTMENT OF MINES
-8 AUG 1966

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QUEENSLAND

The Under Secretary,
Department of Mines,
BRISBANE QLD.

Dear Sir,

Authority to Prospect No. 199M

With reference to your letter, No. 199M, dated the 27th July, I wish to accept your offer of an Authority to Prospect under the conditions set out in the draft Authority to Prospect attached hereto.

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- 2. In doing so it is understood that all rights of renewal of Authority to Prospect No. 199M from the 1st July, 1966, are surrendered.
- 3. A cheque for the sum of \$1,340 being \$340 for rental for the year from the 1st July, 1966, and \$1,000 for a deposit, is being forwarded under separate cover today by my office from Tin Can Bay.

Yours faithfully,

QUEENSLAND TITANIUM MINES PTY. LTD.

(Sgd.) A.F. GRIFFIN

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MANAGER

2/48.

In the Supreme
Court of
Queensland

No. 5

Schedule E
to Demurrer
Copy
Authority
to Prospect
No. 363M
23rd November
1966

No. 5

SCHEDULE E to Demurrer - Copy
Authority to Prospect No. 363M

No. 363 M

"THE MINING ACTS, 1898 TO 1965

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

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:

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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 QUEENSLAND TITANIUM MINES PTY. LIMITED (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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30

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 40 square miles as described in the Schedule hereto.

In the Supreme Court of Queensland

No. 5

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:-

Schedule E to Demurrer Copy Authority to Prospect No. 363M 23rd November 1966 (continued)

Date	Area
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.....
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20 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.

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.

30 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

In the Supreme
Court of
Queensland

No. 5

Schedule E
to Demurrer
Copy
Authority
to Prospect
No. 363M
23rd November
1966
(continued)

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".

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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.

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.

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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.

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

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the part of the Holder to be performed or observed will be performed or observed by the Holder.

In the Supreme
Court of
Queensland

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No. 5

Schedule E
to Demurrer
Copy
Authority
to Prospect
No. 363M
23rd November
1966
(continued)

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

	Date	Rental
20	1st July, 1966	\$340
	1st July, 1967	\$340
	1st July, 1968	\$340
	1st July, 1969.	\$340

30 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.

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

In the Supreme Court of Queensland

No. 5

Schedule E to Demurrer Copy Authority to Prospect No. 363M 23rd November 1966 (continued)

terms and conditions as 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:-

Period	Commencing	Not less than	
One (1) year	1st July, 1966	£25,000	10
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, 20 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 30 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 40 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.

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

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(continued)

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".

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. 10

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. 20

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. 30

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. 40

10 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.

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No. 5

Schedule E to Demurrer Copy Authority to Prospect No. 363M 23rd November 1966 (continued)

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

40 24. CANCELLATION ON DEFAULT: If at any time the Holder shall make default in the performance or observance of any of the provisions of

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Schedule E
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(continued)

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.

10

20

30

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.

40

2/57.

SCHEDULE

GYMPIE WARDEN'S DISTRICT

County of March, Parishes of Cooloola and
Womalah Area, about 40 square miles

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(continued)

10 All the Crown lands and private lands (but not reserves) within the State of Queensland and within the boundaries shown on Plan No. AM 19 held at the Department of Mines, Brisbane (a copy of which is attached), but exclusive of the lands held on 22nd October, 1966, under all mining tenements, holdings and permits to enter under the Acts.

(Note: The actual boundaries on the ground shall be those marked by an authorised surveyor in accordance with the attached plan and the requirements of the Authority to Prospect. The boundaries are shown in relation to the points (marked O). There is no warranty that the boundaries are correctly shown in relation to other features on the map.)

20 DATED at Brisbane this twenty-second day of November 1966.

(Sgd.) R.E. CAMM

Minister for Mines
and Main Roads.

AUTHORITY TO PROSPECT OVER RESERVES

30 Under the powers conferred by Section 46 of "The Mining Acts, 1898 to 1965" the Governor in Council on 8th September, 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:-

40 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

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reserves had originally been included within
the lands comprised in the within Authority
to Prospect.

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SCHEDULE

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

10

Date of Minister's approval: 26th July, 1966.

DATED at BRISBANE this Twenty-third day of
November, 1966.

DEPARTMENT OF MINES
QUEENSLAND
BRISBANE

(Sgd.) E.K. HEALY

Under Secretary
Department of Mines.

20

VARIATION OF AUTHORITY TO PROSPECT

Authority to Prospect No. 363M granted under
the provisions of "The Mining Acts, 1898 to 1967"
and "The Mining on Private Land Acts, 1909 to 1965"
by the Minister for Mines and Main Roads for the
State of Queensland is varied by adding the
following:-

"As from 1st July, 1970, this Authority to
Prospect is varied as follows:-

PERIOD: This Authority to Prospect is extended 30
for a period of two (2) years from 1st July, 1970.

In the tabulation in clause 2 of this Authority
to Prospect, the following is inserted:-

<u>Date</u>	<u>Area</u>
1st July, 1971	20 square miles

RENTAL: In the tabulation in clause 7 of this
Authority to Prospect, the following is inserted:-

2/59.

<u>Date</u>	<u>Rental</u>
1st July, 1970	§340
1st July, 1971	§100 plus §6 per square mile

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No. 5

WORK AND EXPENDITURE: In the tabulation in clause 9 of this Authority to Prospect, the following is inserted:-

Schedule E
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<u>Period</u>	<u>Commencing</u>	<u>Not less than</u>
One (1) year	1st July, 1970	§35,000
One (1) year	1st July, 1971	§40,000

10 Date of Minister's consent: 7th August, 1970

(Sgd.) G. W. COOK

Acting Under Secretary,
Department of Mines.

Date: 12th October, 1970.

DEPARTMENT OF MINES
QUEENSLAND
BRISBANE.

No. 6

No. 6

JUDGMENT OF THE FULL COURT

Judgment of the
Full Court
18th May 1973

20 IN THE SUPREME COURT
OF QUEENSLAND

No. 930 of 1972

B E T W E E N

QUEENSLAND TITANIUM MINES
PTY. LIMITED

Plaintiff

- and -

GORDON WILLIAM WESLEY CHALK

Defendant

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

30

The Eighteenth day of May 1973

2/60.

In the Supreme
Court of
Queensland

No. 6

Judgment of
the Full Court
18th May 1973
(continued)

The Defendant having on the Twelfth day of December 1972 demurred to the whole of the Plaintiff's Amended Statement of Claim delivered on the Twenty-ninth day of November 1972 (save paragraphs 36 and 37 and the 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 Plaintiff his costs of the said Demurrer to be taxed and the Plaintiff having accepted the sum of \$1,253.19 paid into Court by the Defendant together with accretions in satisfaction of the cause of action referred to in paragraphs 36 and 37 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 Plaintiff do recover nothing against the Defendant and that the Defendant do recover against the Plaintiff 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 Twenty-second day of March 1973.

By the Court

Registrar.

No. 7

Judgment of
the Chief
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Sir Mostyn
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4th May 1973

No. 7

JUDGMENT OF THE CHIEF JUSTICE, SIR MOSTYN HANGER

IN THE SUPREME COURT
OF QUEENSLAND

No. 929 of 1972

BETWEEN: CUDGEN RUTILE (No.2) PTY. LTD.

Plaintiff 30

- and -

GORDON WILLIAM WESLEY CHALK

Defendant

No. 930 of 1972

BETWEEN: QUEENSLAND TITANIUM MINES
PTY. LIMITED

Plaintiff

- and -

GORDON WILLIAM WESLEY CHALK

Defendant

2/62.

In the Supreme
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Queensland

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4th May 1973
(continued)

as indicated in the attached draft, over the Crown land and private land and reserves (excluding National Parks) in the areas shown on the attached plan, exclusive of the land held in accordance with the Acts, at the date of publication of the proclamation of the lands, by any person under any claim, Permit to Enter, mining lease or application therefor or Authority to Prospect for any of the minerals specified in Clause 5 of the attached draft. For the purpose of this offer, Crown land and private land shall be deemed to be held under an Authority to Prospect from the date of publication of the proclamation over the land. For land comprised in a reserve, this offer is subject to ratification by the Governor in Council and the availability of the land at such time. 10

It is to be noted that the areas offered will be described in relation to the origins as shown on the attached plan. There is no warranty that the areas are correctly shown in relation to other features of the map. 20

In Clause 7 of this Authority to Prospect, "Standard Rental" shall mean one hundred dollars (\$100) per year or lesser period, plus six dollars (\$6) per year for each square mile or portion thereof of the area of this Authority to Prospect. 30

This offer lapses twenty-one (21) days from the date of this letter unless I receive by then acceptance of the offer and the sum of \$1,172 (being the deposit and rental for the first year)".

4. The area the subject of such offer was an area of about eight square miles in the Parishes of Cooloolah and Womalah and about three and one-half square miles in the Parish of Laguna as shown on Plan AM70 held at the Department of Mines, Brisbane. 40

5. Such offer was duly accepted by the Plaintiff by letter dated the 11th day of

2/63.

January 1967 and the Plaintiff duly paid the said sum of \$1172 (being comprised of \$1000 deposit and \$172 rental for the first year).

In the Supreme Court of Queensland.

No. 7

Judgment of the Chief Justice Sir Mostyn Hanger
4th May 1973
(continued)

10 6. On the 26th day of June 1967 and consequent upon the acceptance by the Plaintiff of such offer, the Honourable the Acting Minister for Mines and Main Roads in and for the State of Queensland granted to the Plaintiff an Authority to Prospect under The Mining Acts, 1895 to 1955 (therein and hereinafter called 'the Acts') numbered 409M 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.

7. The said Authority to Prospect:-

20 (a) was granted to the Plaintiff for a period of 2 years commencing on the 1st day of February 1967; and

30 (b) granted to the Plaintiff the right during such term to prospect the said land 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 plaintiff be appropriate for determining the existence or otherwise of minerals (including gold but excluding coal, mineral oil and petroleum) and their extent and nature in the said land.

8. Certain of the terms of the said Authority to Prospect were:-

40 (a) that the Plaintiff should pay to the Government of Queensland a rental of \$172 for the first year and \$100 plus \$6 per square mile for the second year

(b) that the area comprised therein should be reduced to not more than 6 square miles by the 1st day of February 1968.

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Judgment of
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(continued)

(c) that the Plaintiff should during the said period, continuously prospect the said land or carry out such other investigations in respect thereof as the Honourable the Minister for Mines & Main Roads might approve, and should bona fide expend or cause to be expended the sums of money set out hereunder in respect of such prospecting and investigations:-

10

<u>Period</u>	<u>Commencing</u>	<u>Not Less Than</u>
1 year	1st February, 1967	\$20,000.00
1 year	1st February, 1968	\$30,000.00

9. By letter dated the 17th day of January 1968 the Plaintiff surrendered an area of about 5½ square miles of the said land which surrender was accepted by the said Honourable Minister on the 7th day of March 1968.

10. By a letter dated the 30th day of April 1968 the Government of Queensland by its servant the acting Under-Secretary for Mines made an offer to the Plaintiff in the words and figures following, that is to say:-

20

"Re: Authority to Prospect No.409M.

With reference to your letter dated 1st instant and previous correspondence concerning the above Authority to Prospect, I have to inform you that it has been approved to offer to vary the Authority to Prospect by adding the following:-

30

"The Authority to Prospect is varied as follows:-

PERIOD: This Authority to Prospect is extended for a period of one (1) year from 1st February, 1969.

RENTAL: In the tabulation in clause 7 of this Authority to Prospect, the following is inserted:-

40

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<u>Date</u>	<u>Rental</u>
1st February, 1969	£100 plus £6 per square mile

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(continued)

WORK AND EXPENDITURE: In the tabulation is clause 9 of this Authority to Prospect, the following is deleted:-

<u>Period</u>	<u>Commencing</u>	<u>Not Less Than</u>
One (1) year and the following is inserted:-	1st February, 1968	£30,000

<u>Period</u>	<u>Commencing</u>	<u>Not Less Than</u>
Two (2) years	1st February 1968	£40,000

This offer lapses 21 days from the date of this letter unless I receive by then acceptance of the offer."

11. Such offer was duly accepted by the Plaintiff by letter dated the 8th day of May, 1968.

12. On the 28th day of May 1968 and consequent upon the acceptance by the Plaintiff of the offer set out in Paragraph 10 hereof the Under-Secretary for Mines notified the Plaintiff that the Honourable the Minister for Mines had granted to the Plaintiff the said Authority to Prospect amended as set out in the offer referred to in Paragraph 10 hereof.

13. The said Authority to Prospect as so amended was for a further term of one year from the 1st day of February 1969 and provided, amongst other things, that

(a) the Plaintiff should pay to the Government of Queensland a rental of £100 plus £6 per square mile for the said further period of one year

(b) the Plaintiff should, during the said further period expend or cause to be expended in prospecting and investigation as set out in Paragraph 8(c) hereof an amount of not less than

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£40,000 during the period of 2 years commencing on the 1st day of February 1968, in lieu of the amount of £30,000 in the period of one year commencing on the 1st day of February 1968 as set out in the said Paragraph 8(c).

14. The Plaintiff duly complied with all the terms of the said Authority to Prospect as so amended and in particular:-
- (a) duly paid to the Minister the said annual rental as and when it fell due; and 10
 - (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 Authority to Prospect. 20
15. In the course of such prospecting operations and investigations, the Plaintiff 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
16. The deposits of minerals referred to in Paragraph 15 hereof were such that they could be economically worked at a very great profit to the Plaintiff.
17. At the time of the acceptance by the Plaintiff of the offers referred to in Paragraphs 3 and 10 hereof and at all material times, the Government of Queensland knew:- 30
- (a) that the said area contained large deposits of the minerals referred to in Paragraph 15 hereof; 40
 - (b) that such deposits were capable of being economically worked at a very great profit to the Plaintiff;

- (c) that the Plaintiff intended, during the term of the said Authority to Prospect, to carry out prospecting and investigations in order to determine the extent and location of such deposits;
- (d) that the Plaintiff intended, during the term of the said Authority to Prospect, to apply to the Government of Queensland, for the grant to it of a mineral lease in respect of the lands containing such deposits.

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18. At all material times, it was a term of the said Authority 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 such Authority to be performed or observed by the Plaintiff, the Plaintiff should be entitled at any time and from time to time during the term of such Authority to apply for and have granted to it in priority to any other person or company a mining lease for inter alia the minerals hereinbefore referred to, over any part of the area subject to the said Authority.
19. On the 29th day of January 1970 the Plaintiff duly applied for the grant to it of a Special Mineral Lease Number 322 Gympie District in respect of the said proven Minerals by lodging an application therefor in the office of the Mining Warden at Gympie.
20. The area applied for by the Plaintiff in the said application was within the area subject to the said Authority to Prospect, and amounted to an area of approximately 1150 acres in the Parish of Laguna.
21. In accordance with the Acts and Regulations thereunder the said application was duly heard and considered by the Mining Warden at Gympie on the following days:-

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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	

22. At the hearing of the said application numerous persons and bodies appeared as objectors to the said application contending that the Plaintiff should not be permitted to conduct mining operations in the area the subject of the said application. 10
23. After the conclusion of the said hearing and in accordance with the Acts and Regulations thereunder the Mining Warden, on or about the twentyseventh day of July, 1970, reported to the Minister that the lease applied for by the Plaintiff should be granted.
24. The Plaintiff has complied in all respects with the terms of the said Authority 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 Authority to Prospect necessary to entitle it to have the grant to it of the said lease, and the Plaintiff has required the said Government to grant or procure the grant to it of the same. 20 30
25. The Government of Queensland has refused and neglected to grant the said lease to the Plaintiff and has declared and continues to declare and maintain that the Plaintiff is not entitled to the grant to it of the said Lease and has repudiated any obligation to grant or cause to be granted to the Plaintiff the said lease.
26. As a result of such refusal the moneys expended by the Plaintiff in carrying out such prospecting and investigations and in making preparations for mining the said deposits of minerals and the costs incurred by the Plaintiff in applying for 40

the said lease have been wasted, the Plaintiff has lost the profits which it would have obtained from the sale of the said minerals when extracted, and the Plaintiff has suffered other loss and damage.

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10 27. (a) (Alternatively to the matters referred to in Paragraphs 4 to 9 inclusive and 12 to 26 inclusive aforesaid) by an agreement made in the month of January 1967 (as varied by an agreement made in the month of May 1968) between the Government of Queensland of the one part and the Plaintiff of the other part the Government of Queensland for the consideration appearing in and by the said letters dated the 6th day of January 1967 and the 30th day of April 1968 warranted to the Plaintiff:

20 (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 Plaintiff an Authority to Prospect in accordance with the draft document referred to in the said letter dated the 6th day of January 1967 and in accordance with the variation proposed in the said letter dated the 30th day of
30 April 1968.

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 Plaintiff 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 (and the terms of the variation proposed in the said letter dated the 30th day of April 1968) on the part of the Plaintiff to be performed and observed) to have granted to it a mining lease for the minerals referred to in the said draft

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document under the Acts over any part of the lands referred to in the said draft document.

(b) At the time of the making of the agreement referred to in Paragraph 27(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 27(a) hereof contained large deposits of the minerals referred to in Paragraph 15 hereof; 10

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

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

(iv) that the Plaintiff intended, during the term of the said Authority to Prospect, to apply to the Government of Queensland, for the grant to it of a mineral lease in respect of the lands containing such deposits.

28. All things happened and all times elapsed and all conditions were fulfilled necessary to entitle the Plaintiff to the fulfilment of the said warranties by the Government of Queensland and to the grant to the Plaintiff of the Authority to Prospect referred to in Paragraph 27(a)(i) hereof and to the grant to the Plaintiff of a mining lease referred to in Paragraph 27(a)(ii) hereof. 30

29. If it be held that the Government of Queensland was not empowered as set forth in Paragraph 27(a)(i) hereof the Plaintiff claims damages for the breach of the warranty referred to in Paragraph 27(a)(i) hereof. 40

2/71.

30. If it be held that the Government of Queensland was not empowered as set forth in Paragraph 27(a)(ii) hereof the Plaintiff claims damages for breach of the warranty referred to in Paragraph 27(a)(ii) hereof.

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10 31. (Alternatively to the matters referred to in Paragraphs 4 to 9 inclusive and 12 to 26 inclusive) on the 26th day of June 1967 the Honourable the Acting Minister for Mines and Main Roads purported to grant to the Plaintiff an Authority to Prospect (numbered 409M) 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 Land Acts 1909 (as amended), and in or about the month of May 1968 the Honourable the Minister for Mines purported to extend the term of the said Authority to Prospect for a period of one year.

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- 30 32. (a) The Authority to Prospect referred to in Paragraph 31 hereof contained the terms referred to in Paragraphs 7, 8 and 13 hereof.
- (b) At the time of the granting of the Authority to Prospect referred to in Paragraph 31 hereof and at all material times, the Government of Queensland knew:-
- (i) that the area the subject of the said Authority to Prospect contained large deposits of the minerals referred to in Paragraph 15 hereof;
- (ii) that such deposits were capable of being economically worked at a very great profit to the Plaintiff;
- 40 (iii) that the Plaintiff intended, during the term of the said Authority to Prospect, to carry out prospecting and investigations in order to determine the extent and location of such deposits;

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(iv) that the Plaintiff intended, during the term of the said Authority to Prospect, to apply to the Government of Queensland, for the grant to it of a mineral lease in respect of the lands containing such deposits.

33. By the grant of the Authority to Prospect referred to in Paragraphs 31 and 32 hereof and by the extension of the term thereof the Government of Queensland warranted to the Plaintiff that the Government of Queensland was empowered to grant or cause to be granted and would grant or cause to be granted to the Plaintiff the right (subject to due performance and observance of the provisions of the Acts and the terms conditions provisions and stipulations in the said Authority to Prospect on the part of the Plaintiff to be performed and observed) to have granted to it a mining lease for the minerals referred to in the said Authority to Prospect under the Acts over any part of the lands referred to in the said Authority to Prospect 10
34. All things happened and all times elapsed and all conditions were fulfilled necessary to entitle the Plaintiff to the fulfilment of the said warranties by the Government of Queensland and to the grant to the Plaintiff of the Mining Lease referred to in Paragraph 33 hereof. 30
35. If it be held that the Government of Queensland was not empowered as set forth in Paragraph 33 hereof the Plaintiff claims damages for breach of the warranty referred to in Paragraph 33 hereof.
36. The Government of Queensland threatens and intends to take all such steps as may be necessary to have the area the subject of the said application for lease declared to be a national park. 40

AND the Plaintiff claims:-

- (A) By virtue of the allegations of fact contained in Paragraphs 1 to 26 hereof inclusive:-
- (a) specific performance of the promises referred to in Paragraph 18 hereof;

(b) if the Court declines to grant specific performance, NINE HUNDRED AND FORTYEIGHT THOUSAND THREE HUNDRED AND NINETY DOLLARS (\$948,390.00) damages for breach of contract;

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(c) further or alternatively, a declaration that the Plaintiff is entitled to the grant to it of the said lease.

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(B) In the alternative to (A) damages for breach of the warranty referred to in Paragraph 27(a)(i) hereof.

(C) In the alternative to (A) damages for breach of the warranty referred to in Paragraph 27(a)(ii) hereof;

(D) In the alternative to (A), (B) and (C) damages for breach of the warranty referred to in Paragraph 33 hereof.

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(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 area the subject of the said application for lease be declared a National Park.

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

The substance of the claim of the Plaintiff in the action was that there had been a valid binding agreement made between the Government of Queensland and the plaintiff to grant a lease of an area of land; and that the agreement in each case was contained in a clause of the Authority to Prospect which entitled the plaintiff at any time and from time to time to apply for and have granted to it in priority to any other person or company a mining

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lease over any part of the land comprised within
"this Authority to Prospect."

The answer of the defendant was that no contractual relations were entered into with the plaintiff - that neither the agreement to grant nor the grant of an Authority to Prospect was intended to constitute nor did either of them constitute a contract; that, if the agreement or grant did operate as a contract, it placed a fetter upon the discretion of the Governor in Council as to granting mineral leases; that the alienation of any interest in Crown land was subject to legislative restriction; and that an agreement to grant a lease without there being any specified term for the lease or other terms referred to in the Mining Acts was not a contract such that it could be the basis for either specific performance or damages - was not a contract at all.

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Though the case for the plaintiff, on the argument put to the Court, was that it arose out of a contract, the pleading does not allege a contract in the usual way. Instead, it refers to letters which passed between the Under Secretary of the Department of Mines and the plaintiff, and it speaks of the letters as containing offers and the acceptance of offers. It makes no reference to consideration as such. It does not state anywhere with whom any contract was made. Paragraph 10 alleges that by a letter dated 30th April 1968, "the Government of Queensland by its servant the Acting Under Secretary for Mines made an offer to the plaintiff" etc. Paragraph 11 alleges acceptance of the offer by the plaintiff. Paragraph 12 alleges a notification by the Under Secretary for Mines that the Minister for Mines had granted to the plaintiff an amended Authority to Prospect in accordance with the offer referred to in Paragraph 10. All this leaves me very much in the dark as to the person or body with whom the contract relied on by the Plaintiff is said to have been made. From the offer referred to in Paragraph 10 and the acceptance mentioned in Paragraph 11, is there an allegation that the Government was the contracting party? If so, then who or what was the Government? There is no such legal entity. The claim of the plaintiff is that it is entitled to get a lease or damages for

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breach of a contract to grant a lease. But the only authority which could grant a lease is the Governor with the advice of the Executive Council. No reference was made to any Order in Council by which the Governor in Council indicated that he had made any agreement to grant any lease.

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10 In so far as the document relied on by the
plaintiff was an Authority to Prospect, its validity
and effect were derived from s.23A of The Mining
Acts. No authorisation by the Government of the
grant of the Authority could make it any more
effective or make it the grant of anyone but the
Minister for Mines. While the document might
confer rights which could sustain a claim under
The Claims against Government Act, the authority of
"the Government" to its grant did not affect its
validity or enlarge its scope as an Authority to
Prospect. In so far as the document went beyond
20 the limits of s.23A, authority for that would have
to be found elsewhere. If everything else be
assumed in favour of the plaintiff, it seems to me
fundamental to know with whom the plaintiff made
the agreement which it alleges; and it is not
alleged that it was made with the Governor in
Council.

30 I notice also that the claim for relief in
Paragraph A claims specific performance of the
promises referred to in Paragraph 18. As a claim
for specific performance of a contract, it is
unusual. I have always understood that a judgment
for specific performance enures for the benefit of
the defendant as well as for the benefit of the
plaintiff. A common form of judgment will be
found in Cooper v. Morgan (1909) 1 Ch. 261 at p.262.
The claim throws no light on the questions, who is
the other contracting party? and who is to perform
the promises?

I find it convenient to refer to some matters
of law which were treated as basic in the argument.

40 S. 23A of The Mining Acts, 1898 to 1967,
introduced in 1930, constitutes Part IIIA of the
Act and is entitled "Authority to Prospect". By
subsec.(1), it entitles any person to apply to the
Minister (see s.3) for an authority to prospect on
any Crown lands and authorises the Minister to

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grant such authority. It then provides that the area to be held under such authority, the term, rent, and the conditions, provisions and stipulations as to labour and other matters shall be fixed by the Minister. "Failure to comply with any conditions, provisions and stipulations so fixed shall render the authority liable to be cancelled by the Minister." The words "so fixed" must mean fixed by the Minister; and the "failure to comply" with the conditions etc. must be a failure to comply by the grantee of the Authority to Prospect.

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The subsection suggests that the Minister can lay down conditions which bind the grantee; it does not suggest his laying down conditions which bind the Minister or the Crown. Subsec.(2) describes the effect of the grant. "Such authority shall entitle the holder to take possession of the area on payment in advance of the rent fixed as aforesaid, and survey fee if necessary, and to carry on prospecting operations during the term of such authority." This is the limit of an Authority to Prospect as such. I doubt whether the Minister, within the limits of his authority to grant an Authority to Prospect had power to incur any obligations at all.

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The proposition was advanced for the plaintiff that the relation established between the Minister and the grantee of an Authority to Prospect is contractual. It was said that whenever the Minister granted an Authority to Prospect, the relation between the Minister and the grantee arose out of a contract or became contractual.

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In O'Keefe v. Williams 5 C.L.R. 217, Isaacs J. quoted from The Queen v. Mayor of the City of Wellington 15 N.Z.L.R. 72 at p.86:-

" The Governor, on behalf of the Crown, deals with the lands of the Colony under the directions of the Legislature, to which legislation the Crown is of course a party. If, therefore, the legislature creates an obligation on the Crown, with its assent, to convey land to a specified person or body, upon and in consideration of such person or body doing something on his or its part, it seems to us that that constitutes an agreement or contract on the part of the Crown."

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Isaacs J. followed this citation with other citations from Kettle v. The Queen 3 W.W. & a'B(E) 50 at p.59 and The Attorney-General of Victoria v. Ettershank L.R. 6 P.C. 354 at p. 372.

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Isaacs J. regarded these cases as establishing conclusively that the right which the runholder had to certain licences under the Crown Lands Acts of New South Wales was by contract with the Crown; and at p.230 he said:-

10 "It may fairly be said that the whole frame of the Crown Lands Act shows that the legislature has merely enacted the method and conditions upon which the Crown may contract for the disposal of its interest in the public lands".

In a later case, O'Keefe v. Williams 11 C.L.R. 171, Isaacs J. added to the authorities to which he had referred in the earlier case, Blackmore v. North Australian Co., L.R. 5 P.C. 24.

20 So, also, Griffith C.J., in the second O'Keefe case said:-

"It has been recognized for many years that the relationship between the Crown and the holders of Crown lands under the Land Acts of the Australian States is of a contractual nature. See for instance Attorney-General of Victoria v. Ettershank L.R. 6 P.C. 354; Fisher v. Tully 3 App.Cas. 627; Minister of Mines v. Harney (1901) A.C. 347".

30 Towards the end of p.191, the Chief Justice referred to "a statutory contract".

I think it is of some importance to consider how this "statutory contract" arises.

In O'Keefe v. Williams 11 C.L.R. at p.190, Griffith C.J. referred to the relevant legislation:

40 "The first-named section provides that on the happening of certain prescribed conditions the holder of a run 'shall be entitled to occupy' the land in question 'for grazing purposes', and shall be entitled to an occupation licence on compliance with certain

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further conditions. The secondly-named section provides that on compliance with prescribed conditions the holder of a pastoral lease in the Central Division shall be entitled to occupy the land in question 'under a preferential occupation licence;' which is subject to the provisions of the Act of 1884 with some qualifications".

The essence of a simple contract is the agreement of two parties and the presence of consideration; agreement is commonly evidenced by an offer and acceptance which may take varying forms. Having regard to the terms of the legislation to which Griffith C.J. referred, I think that the statutory contract to which he referred can come into existence as a contract only if the legislation is to be regarded as a continuing offer being made to a landholder that, when he complies with the statutory requirements, he has the rights which the statute gives. His compliance with the statutory requirements is the acceptance of the offer in the same way as compliance with the terms of the advertisement was an acceptance in Carlill v. Carbolic Smoke Ball Co. (1893) 1 Q.B. 256. If the Crown or person responsible did not then issue the occupation licence which became his right, he could enforce the right which he had acquired. If the situation must be looked at as giving rise to a contract, the contract is to confer the rights which the legislation mentions. 10 20 30

All the other cases to which reference was made except Harney's case have as their bases similar legislative provisions. In Attorney-General for Victoria (supra), the statute gave a right to the lessee from the Crown to purchase the fee. The question which fell for determination was whether the plaintiff's right was founded on or arose out of a contract within the Crown Remedies and Liability Statute. At p.372, the Privy Council said, "It was said that the right to the grant of the fee was not given by contract, but by statute. It is true that the right is created by the statute, but it is conferred upon the holder of a lease, and accrues to him by reason of such lease, and only upon payment of the full rent agreed to be paid under it. It is a statutory right annexed to the lease, and an implied term of the contract, and therefore may be properly said to be founded on and to arise out of it". That case was on appeal from Victoria. 40

Fisher v Tully (supra) was an appeal from Queensland. At p.361, the relevant legislation is referred to.

"The general scheme provided by the Act in the case of conditional purchase is, that a lease is first granted by the Governor to a selector for ten years, at a fixed rent (which may become purchase-money), payable yearly in advance, then upon payment of the whole of the rent, and, speaking generally, upon performance of the requirements and conditions of the lease and of the Act, the lessee is entitled to a grant in fee simple".

"Provision is made, as will be presently seen, for the acceleration of the right to the grant in fee simple upon prepayment of the whole rent".

It was clearly provided in the statute that on compliance with conditions, the lessee should "be entitled to a grant of the land in fee simple". And I pause to notice here that when he got his grant in fee simple, the whole "statutory contract" made by the offer in the legislation and the acceptance by performance of the required conditions, was completely executed. Nothing more remained to be done by either party.

In Harney's case (supra), applications by the respondents for leases under the Goldfields Act 1886 (W.A.) were recommended by the Cabinet and the approval of the Governor in Council of the applications was gazetted pursuant to the regulations then in force. Later, Cabinet advised the Governor to approve the cancellation of those approved applications for leases and the Governor's approval of the cancellation was gazetted. Proceedings were brought by petition of right for damages for breach of an agreement by the Government to grant the leases or alternatively for wrongful cancellation of the two approvals of the applications. On the hearing of the appeal to the Privy Council, it was not contended "that there was any power in the Governor to cancel his approval" of the leases in the circumstances or in the manner in which he had done so. The Privy Council held that the award of damages for wrongful cancellation of the leases must stand. The Privy Council did not say on what footing the damages were awarded.

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The report of the proceedings in the West Australian Reports tells no more than this and I do not think the case at all helpful on the question I am at the moment concerned with. The other cases referred to, Kettle v. The Queen (supra), The Queen v. Mayor of the City of Wellington 15 N.Z.L.R. 72, and Blackmore v. The North Australian Co. Ltd. L.R. 5 P.C.24 were all concerned with legislation on similar lines.

In O'Keefe v. Williams (supra), the New South Wales Lands Act 1884, by s. 81 enabled the Governor in Council to issue occupation licences which entitled the licensees to occupy for grazing purposes a resumed area or vacant lands; it also provided that a rentholder should be "entitled" to an occupation licence if he applied for it and should have deposited £2 for each 640 acres on account of the first year's licence fee and that on approval, he must pay to the Minister the difference between that sum and the sum appraised by the Treasury. The licensee became entitled to occupy the land for grazing purposes. The legislation in this case is similar to that in the other cases to which reference was made in that the statute set out an entitlement to land on the fulfilment of conditions.

The Mining Acts with which we are here concerned have no such provision. S. 23A in plain words confers no right to get an Authority to Prospect from the Minister; and the cases cited are no authority for a proposition that any person has by contract any right to get an Authority to Prospect. In each case, except Harney's case, someone was endeavouring to get from the Crown an interest which he said the legislation entitled him to on compliance with statutory conditions. In the instant case, the plaintiff agrees that it has an Authority to Prospect, that the Minister has exercised his power to grant this authority; and what it claims is that the Authority granted contains the terms of a contract which it is entitled to enforce; that in granting the Authority, the Minister was able to bind the Government to grant a lease to the plaintiff. It is this alleged promise which is the basis of the plaintiff's claim.

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As I have already said, I doubt whether the Minister has, in the exercise of the authority given to him by s. 23A power to bind himself by undertaking any obligations on the grant of an Authority to Prospect. The section envisages only conditions etc. to be observed by the grantee, non-compliance with which renders the authority liable to be cancelled. The section does not contemplate conditions binding on the Minister, nor does it provide for the effect of a breach of any obligation undertaken by him.

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Discussion also took place the relevance of which I do not appreciate, as to the implication of terms in what was called "a statutory contract". In O'Keefe v. Williams (supra) at pp.191-2, Sir Samuel Griffith referred to the existence of an implied obligation in a lessor not to disturb a lessee in his occupation:

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"The question, then, is whether as between the Crown and a subject to whom the Crown has contracted to give the exclusive occupation of land, there is to be implied an obligation in the nature of a promise not to disturb him in that occupation. In the case of an express contract in similar terms between subject and subject, I have no doubt that such a promise would be implied".

Then, at p.193, the Chief Justice said:

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" I do not know of any ground in reason or authority for applying different canons to the construction of contracts between the Crown and a subject and contracts between subject and subject".

And he went on to hold

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"that a contractual obligation is to be implied in the case of a demise by the Crown under the Australian Crown Lands Acts, to the effect that the Crown will not disturb or authorize the disturbance of the lessee in his occupation."

The Chief Justice was dealing with the situation as one which gave rise to the implication of a term

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in a contract. I am by no means sure that the situation was not rather the implication of a term in a statute. In the case of this "statutory contract", the terms are in the statute. It is not possible to read into a statute something which is not there. Rose v. Hyric 108 C.L.R. 353.

It was argued by the defendant that the Authority to Prospect was not in any case to be regarded as a contract.

The document purports to be issued by the Minister under the authority of The Mining Acts 1898 to 1965 and The Mining on Private Land Acts 1909 to 1965. I have already referred to s. 23A of The Mining Acts 1898 to 1965. S. 12A of The Mining on Private Land Acts enables the Minister to grant an authority to prospect on private land and to fix the area, the rental, term and conditions of the authority and the period during which it is to be in force. It entitles the holder to prospect in the area. Failure to comply with any term or condition renders the authority liable to immediate cancellation by the Minister.

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The document fixes the term of the Authority, the areas and other conditions and clause 20 is as follows:-

" 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 land comprised within this Authority to Prospect".

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Consideration of the arguments put forward requires some reference to the legislation.

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Power to grant a mineral lease under The Mining Acts is contained in s.30. It is conferred upon the Governor which means the Governor with the advice of the Executive Council (s. 3). Where the

Minister is satisfied that the mining operations will be difficult and costly, a "special" mineral lease may be granted under the section. The area of a special mineral lease is to be such as the Governor in any case considers proper. Applications for mining leases are to be made in the prescribed form (s. 39); that is, prescribed by the Act or the Regulations (s. 3). Applications by persons who have complied with the Regulations shall take priority according to the order in which they are made. S. 39(2).

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Regulation 90 prescribes the form of application for a lease which is to be made to the Warden; Regulation 91 requires that an applicant before making application shall mark out the land and that the application must be made within seven days after the marking. The Warden is to record each application. He is to record all evidence taken in favour of granting the lease or in support of any objection and to report to the Minister whether the lease should, in his opinion, be granted. (Reg. 98).

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S. 40 provides that the entry upon, occupation of, or interference with, any ground of which a mining lease has been applied for by any person who prior to the application was not in lawful occupation, shall at any time after the lodging of the application and unless the application has been refused, or the entry, occupation or interference has been authorised by the Governor, shall be deemed a trespass or encroachment.

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Regulation 100 provides that where no objection is lodged against an application for a lease, work is to begin not later than seven days after the hearing of the application.

Reference was also made to s.123 which enables the Warden, on the application of any person interested in any area in respect of which an Authority to Prospect subsists, to enjoin any person from encroaching upon, occupying, using or working the area etc.; and also s. 171 A.

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For the defendant, it was argued that if clause 20 gave the plaintiff a right to get a lease of the land, the insertion of the words "in priority to any other person or company" had no effect; he argued that all that the words were intended to do

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was to tell the plaintiff that if and when it was decided to grant a lease of the land, it would have a prior claim to anyone else. The plaintiff argued that, as it had the Authority to Prospect, no-one else could go on to the land and mark it out, etc. so as to make a valid application for a lease; and therefore the plaintiff had priority in any case; so that the construction contended for by the defendant achieved nothing anyway; the plaintiff had already a priority which could not be defeated. 10
The choice was therefore between regarding the whole clause as useless or regarding the words "in priority to any other person or company" as useless.

I do not propose to express an opinion on the interpretation of clause 20. It appeared to me from the argument that evidence of the particular circumstances might have a bearing on the interpretation of the clause and therefore it was better not to decide the question at present. 20

However, irrespective of the particular meaning to be given to clause 20, the question arose as to whether there was any contract.

In determining the nature of the arrangement, it is an important factor to be considered that one of the parties was a Minister of the Crown: further, that the power which was purported to be exercised was to grant an Authority to Prospect; that the power was stated to have its origin in the legislation mentioned; and that there was no authority in the Minister to make the contract alleged. See Australian Woollen Mills Pty. Ltd. v. The Commonwealth 92 C.L.R. 424 at p. 455, where the High Court said:- 30

"At the same time, Mr. Windeyer very properly insisted that he was entitled to rely on the absence of statutory authority as an element tending against the inference that a contract binding the Crown was intended by anybody. The fact that one of the parties to the dealings in question was the Crown is, of course, a relevant and indeed a fundamental consideration". 40

In this connection, I think that the following extract from Commercial Cable Co. v. Government of

Newfoundland (1916) 2 A.C. 610 at p. 616 is very relevant:

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10 " Their Lordships think it clear that the Governor is by these provisions subjected to constitutional restriction, and that any persons dealing with him, whether or not they actually know the character of his authority, must be taken to deal subject to such restriction. No doubt, if he chose in unambiguous language to bind himself by any contract personally, the Governor could do so and take the consequences; but he could not by so doing bind the Parliament and the people over whom he is appointed to exercise authority subject to the constitutional conditions already referred to. And when he makes a contract it is well settled that the presumption is that he contracts in his public capacity and subject to the particular restrictions which the constitutional practice of the Colony imposes. These restrictions every one transacting public business with him must be taken to accept in so transacting, and any contract entered into with him in his public capacity will be presumed, unless the contrary plainly appears, to have been entered into on this footing".

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30 On this question also, as to whether the Authority to Prospect was intended to constitute a contract, I do not express an opinion. The interpretation of clause 20 may have a bearing on the matter and as I have left that question unresolved, I must leave this question unresolved also. I add only, in reference to the suggestion that the position of the holder of an Authority to Prospect was very close to that of a lessee, that an Authority may be granted over Crown land already under pastoral lease etc.; that exclusive possession of such land by the holder of the Authority is hard to conceive; and that I have not heard any reason why two Authorities could not be granted over the same land in respect of different minerals.

40 I turn now to the argument that Crown land cannot be disposed of otherwise than pursuant to statutory authority. The Constitution Acts, 1867 to 1961, s. 30, provide for the making of laws regulating the sale letting disposal and occupation of the waste lands of the Crown. S.4 of the same

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Acts vests the entire management and control of the waste lands of the Crown in the Legislature. (See Williams v. Attorney-General for New South Wales 16 C.L.R. 404).

The land belongs to the Crown. The power to authorise disposal of it is in the Legislature. ".....it is clear that it is not within the power of the Crown to dispose of any of the Crown lands otherwise than as prescribed by an Act of the Legislature as a consequence of the provisions of s.40 of the Constitution Act of 1867, vesting the entire management and control in the Legislature" per Lukin J. in Australian Alliance Assurance Co. v. John Goodwin, the Insurance Commissioner 1916 Q.R. 225 at p. 254.

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With this as a foundation, the defendant argued that as only the Governor could grant a lease, the Minister could not agree to grant a lease and could not agree that a lease would be granted by the Governor. The proposition finds support in a passage from O'Keefe v. Williams 5 C.L.R. 217 at p.225 in the judgment of the Chief Justice:-

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"I entirely agree with the Supreme Court in the proposition that no Minister of the Crown has any authority to enter into any agreement for the disposition of an interest of the Crown in Crown lands which is not authorized by the law, and I agree that that applies to any interest which the Crown has power to dispose of";

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If the Minister has no power to lease land, the argument is that he has no power to agree to lease land. In Attorney-General v. The Municipal Council of Sydney (1919) 20 S.R.N.S.W. 46 Owen A.J. held that an agreement to create an interest in land by the Crown otherwise than in accordance with statute creates no equity in the other party. See also The Commonwealth v. Colonial Combing Spinning and Weaving Co. 31 C.L.R. 421 and The Commonwealth v. Colonial Ammunition Co. Ltd. 34 C.L.R. 198 at p.220.

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It was also argued that the Minister cannot fetter by a contract to lease land the exercise of the discretion which is vested in the Governor. The principle can be seen in the following extract

from the judgment of the High Court in Watson's Bay and South Shore Ferry Co. v. Whitfield 27 C.L.R.268 at p.277:-

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10 "First taken as a whole it was an attempt to fetter in advance the discretion and the public duty of the Minister of Lands for the time being. The very ground of the claim is that the Minister was bound by the contract to exercise his statutory power, not as the expediency of doing so presented itself to him at the moment of exercise, but as predetermined by the contract. It was just that his discretion was exercised at the time of making and by the act of making the contract. But the answer to that is that on the true construction of the Act and, particularly in this connection, of section 63, that is not a mode of exercising his discretion that comes within his authority. The contract was not the completed exercise of discretion, as in the cases cited of private trustees, but it was an anticipatory fetter on the future exercise of discretion and public action. That discretion might, if unfettered, lead the Minister to retain the land as Crown land, and so change his intention, however and whenever previously formed, of selling the land by auction: That agreement is impossible to support".

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30 If the Minister could not fetter his own discretion in that case, a fortiori, the Minister in the instant case could not fetter the discretion of the Governor.

40 See also South Australia v. The Commonwealth 108 C.L.R. 130 at p.141 where Dixon C.J. quoted an extract from an article of Sir Harrison Moore in the Journal of Comparative Legislation (1935) 3rd Series, vol.17 Pt.IV p.163 which contained the following:- "Even an agreement of the Crown with an individual respecting the future exercise of discretionary powers - that they will or will not be exercised in a certain way - probably cannot be a valid contract".

I refer now to the question whether on the assumption that the Authority to Prospect was intended to give rise to contractual relations it is sufficiently certain to be enforceable either by way of specific performance or as a basis for

In the Supreme
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No. 7

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the Chief
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Sir Mostyn
Hanger
4th May 1973
(continued)

the award of damages. Clause 20 is said to entitle the plaintiff to get "a mining lease for the minerals specified in clause 5 hereof over any part of the lands comprised within" the Authority to Prospect.

The power of the Governor in s.30 is to grant a mineral lease for "any or all" of the purposes set out in the section - for mining for any mineral other than gold; for making water races, drains, dams etc.; for erecting buildings and machinery; for pumping, raising or obtaining water; for residence thereon - all in connection with mining.

10

If the Minister is satisfied that the mining operations on the land will be difficult and costly, a special mineral lease may be granted. By s.33, the term of a mineral lease is not to exceed twenty one years. The area of a special mineral lease is to be such as the Governor in any case considers proper; generally, the area of a mineral lease is not to exceed 320 acres. By s.34, every mineral lease is to specify the mineral or combination of minerals for the making whereof the same is granted. Without limiting the covenants which may be included in a mineral lease every mineral lease is to contain certain reservations, covenants and conditions. By subsec. (1)(5), in the case of a special mineral lease, covenants are to be included as to which the Minister has to make a decision.

20

30

The matters to which I have referred make it clear that "a right to get a mineral lease" is a very indefinite sort of right. It may be a lease for any or all of the purposes specified in s.30; its term may be anything up to twenty one years (s.33); and s.34 suggests that there is no limit to the covenants that may be included in it. Mention of these matters alone indicates the extreme vagueness of the right and the impossibility of complying with an order for specific performance of any agreement to grant a lease or a mineral lease and the assessment of any damages for refusal to grant it.

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" When a court deals with a demurrer it should in strictness discard all statements which are no more than evidentiary and all statements involving some legal conclusion."

South Australia v. The Commonwealth 108 C.L.R.
at p.142 per Dixon C.J.

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Queensland

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Sir Mostyn
Hanger
4th May 1973
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10 Counsel for the plaintiff was careful to explain to us that the word "Government" had been used in his pleading because that was the word used in The Claims Against Government Act and this would "avoid any confusion between conceptions of Government, Crown, Minister, official and things of that kind". The motive may be worthy but the course is not judicious in a pleading which cries aloud to be demurred to. It seems to me that any act of "the Government" authorising a Minister or the Under Secretary would have to be the act of the Executive Council, that is, of the Governor in Council. See New South Wales v. Randolph 52 C.L.R. 455 at p.507; and this requires an Order in Council or some such act. "An order, proclamation or declaration of the Governor-General in Council is the formal legal act which gives effect to the advice tendered to the Crown by the Ministers of the Crown." Australian Communist Party v. The Commonwealth 83 C.L.R. 1 at p. 179 per Dixon C.J. I think that the allegation that "the Government" authorised the terms of the Authority to Prospect - if that is what the words of the pleading mean, which I do not think they do - adds nothing to the pleading. See also Re Bonner deceased 1963 Q.R. at p.p.491-2 per Wanstall J. and Halsbury 2nd Edn. Vol.6 p.593.

20

30 Stripped of everything but its essentials, the claim of the plaintiff is that it had, in the Authority to Prospect, a contract with the Minister for Mines to grant a lease, the term of which was not specified; and that, by virtue of this contract, the Governor - that is, the Governor with the advice of the Executive Council - was bound to grant the lease and for the maximum period allowed by the legislation. I doubt whether the Authority to Prospect should bear the construction put upon it; there are strong reasons which militate against its being construed as a contract; but neither of these questions do I decide. If the document did contain the terms of a contract, if and in so far as it purported to bind the Crown, the Minister for Mines had no authority to make it; it purported to place a fetter upon the authority of the Governor in Council; and in any case, the terms of the suggested contract are too vague and uncertain to be enforce-

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In the Supreme Court of Queensland

No. 7

Judgment of the Chief Justice Sir Mostyn Hanger 4th May 1973 (continued)

able either by way of specific performance of the "promises" contained in it or by way of damages; further, it does not appear against whom it could be enforced - certainly not against the Governor in Council. On these grounds, the demurrers should be allowed.

No. 8

Judgment of Stable J. 4th May 1973

No. 8

JUDGMENT OF STABLE J.

IN THE SUPREME COURT OF QUEENSLAND

No. 929 of 1972 10

BETWEEN: CUDGEN RUTILE (No.2) PTY. LTD. Plaintiff

- and -

GORDON WILLIAM WESLEY CHALK Defendant

No. 930 of 1972

BETWEEN: QUEENSLAND TITANIUM MINES PTY. LIMITED Plaintiff

- and -

GORDON WILLIAM WESLEY CHALK Defendant

No. 931 of 1972 20

BETWEEN: CUDGEN RUTILE (No.2) PTY. LTD. First Plaintiff

QUEENSLAND TITANIUM MINES PTY. LIMITED Second Plaintiff

- and -

GORDON WILLIAM WESLEY CHALK Defendant

JUDGMENT - STABLE J.

In these actions the end results sought by the

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plaintiffs are mining leases following, for the purpose of these cases and putting it shortly, compliance with the terms of Authorities to Prospect. These are set out so far as is relevant in the reasons of Hart J. which I have had the advantage of reading.

In the Supreme Court of Queensland

No. 7

Judgment of Stable J.
4th May 1973
(continued)

10 Assuming that clause 20 of these documents is to be read as though the words "in priority to any other person or company" are not there, what is to be the lease in each case? It is to be a document for the most part in accordance with the provisions to which we were referred. But a most material area of negotiation remains - the duration of any lease to be granted. The material before us shows that this meeting of contracting minds, this mutuality, is missing. This being so, for the reasons more fully expressed by Hart J., I consider that the demurrers should be allowed.

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No. 9

20 JUDGMENT OF HART J.

Judgment of Hart J.
4th May 1973

IN THE SUPREME COURT OF QUEENSLAND

No. 929 of 1972

BETWEEN: CUDGEN RUTILE (No.2) PTY. LTD. Plaintiff

- and -

GORDON WILLIAM WESLEY CHALK Defendant

No. 930 of 1972

BETWEEN: QUEENSLAND TITANIUM MINES PTY. LIMITED Plaintiff

- and -

GORDON WILLIAM WESLEY CHALK Defendant

No. 931 of 1972

BETWEEN: CUDGEN RUTILE (No.2) PTY. LTD. First Plaintiff

QUEENSLAND TITANIUM MINES PTY. LIMITED Second Plaintiff

- and -

GORDON WILLIAM WESLEY CHALK Defendant

30

In the Supreme
Court of
Queensland

No. 9

Judgment of
Hart J.
4th May 1973
(continued)

JUDGMENT - HART J.

These are three actions brought against Mr. Chalk as a Nominal Defendant under the Claims against The Government Act. In each action a Statement of Claim was delivered and demurred to by the Nominal Defendant. The demurrers were heard together before the Full Court.

The three actions were much the same in substance. I shall first very shortly summarize the Statement of Claim in Action No. 930 of 1972 in which Queensland Titanium Mines Pty. Ltd. is plaintiff. 10

It sets out that on the 27th June, 1966, the plaintiff was the holder of an Authority to Prospect No. 199 M duly granted by the Minister for Mines and was by its terms entitled to an extension of time; that on that date the plaintiff applied for an extension of time; that by a letter of 27th July 1966 the Under Secretary for Mines wrote to the plaintiff offering it an Authority to Prospect No. 363 M, in terms of an attached draft, over the lands which had been comprised in Authority No. 199 M. This offer was duly accepted and an Authority to Prospect No. 363 M was issued by the Minister in terms of the draft. The Governor in Council granted an Authority to Prospect also numbered 363 M in respect of so much of the lands as was reserve, (this was because of s. 46 of the relevant, though now repealed, Mining Act of 1898 and its amendments). Clauses 5 and 20 of the draft and of the Authorities to Prospect numbered 363 M were :- 20 30

"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) 40

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."

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Court of
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No. 9

Judgment of
Hart J.
4th May 1973
(continued)

10 "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."

20 The Authority to Prospect was for four years from the 1st July, 1966. Paragraph 13 set out the amount the plaintiff was to expend during that period. The plaintiff pleaded that it had complied with all the conditions and found that the land contained large deposits of rutile and zircon and deposits of ilmenite, monazite and other minerals of commercial value. It alleged that the deposits could be economically worked at very great profit to itself.

Paragraph 18 was:

30 "18. 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 Plaintiff, the Plaintiff should be entitled at any time and from time to time during the term of such Authorities to apply for and have granted to it 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."

40

In this claim the pleader was relying upon the terms of clause 20 of the Authorities to Prospect

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Hart J.
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(continued)

363 M which were, as I have stated, in the same terms as the draft clause 20 set out above in the Government's offer of the 27th July, 1966. Before us it was also argued that the acceptance of the offer in the draft contract constituted a contract.

The pleader goes on to plead that the plaintiff duly applied for Mining Leases. He sets out that the application was duly heard and considered by the Mining Warden at Gympie, and that at the hearing before the Warden there were numerous objections to the granting of the application, but that after hearing the matter the Warden recommended that each of the leases applied for by the plaintiff should be granted. It is pleaded that the plaintiff has done everything required on its part to be done, and that it has requested the Government to grant leases to it. Paragraph 25 sets out that the Government has refused to grant the leases and paragraph 26 sets out that as a result the plaintiff has lost the profits which it would have made.

10

20

The Statement of Claim then goes on to allege the breach of certain warranties. The plaintiff informed us at the hearing that it does not wish to pursue the matter of the warranties before us, as we would be bound by authority to refuse its claims. However, it stated that it did not abandon them but reserved the right to argue them elsewhere. The plaintiff's claim is for specific performance of the promises referred to in paragraph 18, and in the alternative, for \$14,732.00 for breach of contract.

30

Clause 18 of Action No. 929 and Clause 19 of Action No. 931 are in the same terms as Clause 18 of Action No. 930. In each case in the draft Authorities to Prospect and in the actual Authorities to Prospect there were clauses in the same terms as clauses 5 and 20 set out above. Clauses in form 20 were the bases of the allegations in paragraph 18 of Action No. 929 and of paragraph 19 of Action No. 931. In both these actions Specific Performance is claimed, in the alternative \$948,390 is claimed for damages in Action No. 929 and \$12,972,740 in Action No. 931. In both actions also, the same reservations as in Action No. 930, were made as to the same alleged warranties.

40

It will be seen that the question in each case was whether in all the circumstances the presence of clause 20 in the draft Authority to Prospect and in the actual Authority to Prospect created an agreement for a lease.

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Judgment of
Hart J.
4th May 1973
(continued)

10 There were really two points argued by Mr. Brennan Q.C. in support of the Demurrer in each case (1) that the Government of Queensland could not bind itself to grant leases in the manner claimed because of the constitutional position, and (2) that even if it had the power, it had not in fact so bound itself.

It was submitted inter alia that when the time came to issue the leases the Governor in Council had to consider the position, as it then was, and that he could not be bound beforehand as to what he would do.

20 The plaintiffs claimed that binding contracts had been created. They relied amongst other cases on O'Keefe v. Williams 11 C.L.R. 171. There Griffith C.J. said at P.190:-

30 " It has been recognized for many years that the relationship between the Crown and the holders of Crown lands under the Lands Acts of the Australian States is of a contractual nature. See for instance Attorney-General of Victoria v. Ettershank L.R. 6 P.C., 354; Davenport v. Req. 3 App. Cas., 115; Fisher v. Tully 3 App. Cas., 627; Minister of Mines v. Harney (1901) A.C. 347. In the last-named case a subject recovered heavy damages against the Crown for refusal to grant a mining lease in pursuance of a statutory engagement arising upon the facts."

At p. 197 Barton J. said:-

"The Courts, both here and in England, have recognized the contractual nature of dealings in land between the Crown and its subjects under the Crown Lands Acts of the several States."

40 See also the remarks of Isaacs J. at p.207.

The argument for the plaintiffs does appear to entail at least one strange consequence. The

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Hart J.
4th May 1973
(continued)

effect of one of their arguments was that the Minister in granting an authority to prospect under s.23A has power to bind the Governor in Council to grant a lease under s.30. Under that section the Governor in Council alone has power to grant a lease. The only power that ss.23A(a) gives to the grantee of an authority to prospect is to carry on prospecting operations during the term of the authority.

However, I shall assume without in any way so deciding that both the Minister for Mines and the Governor in Council possessed the powers alleged by the plaintiffs.

10

The question then is, have they in fact exercised them in the manner claimed? In Von Hatzfeldt-Wildenburg v. Alexander 1912 1 Ch.284 Parker J. said at p.p. 288-289:-

"It appears to be well settled by the authorities that if the document or letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of a further contract is a condition or term of the bargain or whether it is a mere expression of a desire of the parties as to the manner in which the transaction already agreed to will in fact go through. In the former case there is no enforceable contract either because the condition is unfulfilled or because the law does not recognise a contract to enter into a contract. In the latter case there is a binding contract and the reference to the more formal document may be ignored."

20

30

In Chillingworth v. Esche 1924 1 Ch.97 Sargeant L.J. said at p.113:-

"I desire to say one or two words as to the phrase 'contract to enter into a contract'. This phrase is used by Parker J. in his classic judgment in Hatzfeldt-Wildenburg v. Alexander, but only I think as a secondary or less active method of stating the alternative. In the strictest sense of the words the Court will often enforce a

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In the Supreme
Court of
Queensland

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No. 9

Judgment of
Hart J.
4th May 1973
(continued)

10 contract to make a contract. The specific performance of a formal agreement of purchase is the enforcement of a contract to make a contract; the ultimate conveyance being often in itself in many respects a contract. The same remarks apply to the specific performance of a clause in a lease giving the lessee an option to purchase the superior interest of the lessor, freehold or leasehold as the case may be. The true meaning of the phrase is that the Court will not enforce a contract to make a second contract part of the terms of which are indeterminate and have yet to be agreed, so that there is not any definite contract at all which can be enforced, but only an agreement for a contract some of the terms of which are not yet agreed."

20 It seems to me that his Lordship's remarks last cited cover the precise situation here. What the plaintiffs are setting up in each case is a contract for a lease or an agreement for a lease, the basis of the claim being clause 20, which does not fix the duration of the term.

It is stated in Hill and Redland's Law of Landlord and Tenant 15th Ed, 1970 at p.108, para 52:-

30 "A concluded contract may be resolved, by examination of its language, into an offer by the lessor to let, and of unconditional assent by the lessee to take, the property on certain terms. The essential terms of an agreement for a lease are:-

- (1) Identification of the lessor and lessee;
- (2) The premises to be leased;
- (3) The commencement and duration of the term;
and
- (4) The rent or other consideration to be paid.

40 If the matters just mentioned are ascertained to be thus offered and accepted, and providing the agreement is supported by consideration, this is sufficient."

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Court of
Queensland

No. 9

Judgment of
Hart J.
4th May 1973
(continued)

In Harvey v. Pratt 1965 1 W.L.R. 1025, Davies
L.J. said at p.1027:-

"In the case of an agreement for a lease, if
the length of the term and the commencement
of the term are not defined, then the subject
of the agreement or contract is uncertain.
Therefore, there is no agreement."

And Russell L.J. said, commencing on the same page -

"The truth is that the parties must themselves
define the subject matter of their bargain,
and a term of years can only be defined by
indicating the commencement and the
termination." 10

Halsbury 3rd Ed. Vol.23 at p.440 in para. 1039 is
to the same effect. It is there stated that one of
the essential terms in an agreement for a lease is
the commencement and duration of the term. King v.
McIvor 1883 IV. N.S.W.L.R. 43 decides that an
agreement for a lease is not binding on the Crown
unless a fixed term has been agreed upon. 20

The third paragraph of r.97(1) of the Regula-
tions under the Mining Acts 1893 to 1967 is:-

"The term of a mining lease commences on the
first day of that month which next follows
the day on which the application has been
made to the warden."

We have heard no argument as to whether this
regulation is binding on the Crown, or as to
whether it sufficiently fixes the commencement of
the term. But because of its existence I shall
assume, without so deciding, that the commencement
of the term has been sufficiently determined. 30

But here there is nothing in any of the docu-
ments that have passed between the parties, letters
or anything else, which the plaintiffs allege to
constitute an agreement for a lease, which
indicates the duration of the term. This is, in my
opinion, fatal to their claim. It is true that the
Mining Acts 1898-1967 imply certain terms, but they
do not imply the actual term of the Mining Lease. 40
S.s.33(2) simply says that the term shall not

exceed twenty-one years, with a right in the Minister to renew. The duration must depend upon agreement.

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Court of
Queensland

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No. 9

Judgment of
Hart J.
4th May 1973
(continued)

10 Mr. Hampson Q.C., argued for the plaintiffs that the Court should imply a reasonable term, having regard to all the circumstances, including the time it would take to mine the minerals discovered. No doubt when goods have been sold and delivered and s.s. 11(1) of The Sale of Goods Act 1896 is not applicable, the buyer must pay a reasonable price. This is "in order to prevent the injustice of the defendant taking the goods without paying for them", "Acebal v. Levy (1834) 10 Bing. 376, 131 E.R. 949 at 382, 952. But the present case is an entirely different one, as here the subject matter of the contract itself has not been determined. Despite its language I do not think that clause 20 can be taken, at the best for the respective plaintiffs, as doing anything more than expressing an intention on the part of the Crown to negotiate for a lease with them, in priority to any other person, if certain conditions are fulfilled.

20

30 Mr. Dunn Q.C., in reply also submitted that there are certain other matters referred to in section 34 which have to be agreed upon. But the point upon which I decide the case is that the plaintiffs are claiming that there is an agreement for a lease and they have not alleged anything which determines the duration of the term.

I therefore think that no valid agreement for a lease has been alleged. For this reason the demurrers must be upheld.

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In the Supreme
Court of
Queensland

No. 10

Order of the
Full Court
granting Leave
to Appeal to
Her Majesty
in Council
18th May 1973

No. 10

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

IN THE SUPREME COURT
OF QUEENSLAND

No. 930 of 1972

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

- and -

10

IN THE MATTER of applications for
leave to appeal to Her Majesty in
Council by QUEENSLAND TITANIUM
MINES PTY. LIMITED from the
judgments of the Full Court of the
Supreme Court of Queensland in
Action No. 930 of 1972 between
QUEENSLAND TITANIUM MINES PTY.
LIMITED, Plaintiff and GORDON
WILLIAM WESLEY CHALK, Defendant

20

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 of Queen's Counsel and Mr. Jackson of
Counsel for QUEENSLAND TITANIUM MINES PTY. LIMITED
(hereinafter called "the Applicant") and

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

30

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
Applicant by its Counsel undertaking that it will
on or before the 18th day of July, 1973 take all
necessary steps for the purpose of procuring the

2/101.

despatch of the Record to England

THIS COURT DOETH 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. 930 of 1972 in this Honourable Court on the 18th day of May, 1973:-

In the Supreme
Court of
Queensland

—
No.10

Order of the
Full Court
granting Leave
to Appeal to
Her Majesty
in Council
18th May 1973
(continued)

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

20 (b) whereby judgment was ordered to be entered in such action in favour of the Respondent and that the Applicant do recover nothing against the Respondent and the Applicant was 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 DOETH FURTHER ORDER AND ADJUDGE that the costs of and incidental to this motion abide the event unless Her Majesty in Council should otherwise order

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

BY THE COURT

REGISTRAR

In the Supreme Court of Queensland

No.11

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

No. 11

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

IN THE PRIVY COUNCIL
ON APPEAL FROM THE FULL COURT
OF THE SUPREME COURT OF QUEENSLAND

No. 17 of 1973

BETWEEN:

QUEENSLAND TITANIUM MINES
PTY. LIMITED

(Plaintiff)
Appellant

10

- and -

GORDON WILLIAM WESLEY CHALK

(Defendant)
Respondent

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 QUEENSLAND TITANIUM MINES PTY. LIMITED is the Appellant 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. 930 of 1972 on the Eighteenth 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.

20

30

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 day of July One thousand nine hundred and seventy-three.

REGISTRAR

40

IN THE PRIVY COUNCIL

No. 17 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 :

QUEENSLAND TITANIUM MINES PTY. LIMITED (Plaintiff)
Appellant

- and -

GORDON WILLIAM WESLEY CHALK (Defendant) Respondent

RECORD OF PROCEEDINGS

LOVELL, WHITE & KING,
1, Serjeant's Inn,
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Solicitors for the Appellant.

FRESHFIELDS,
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25, Newgate Street,
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Solicitors for the Respondent.