

109, 1937

In the Privy Council

No. **123** of 1936.

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

Between

KNIGHT SUGAR COMPANY, LIMITED,
(*Plaintiff*) Appellant

—and—

THE ALBERTA RAILWAY AND IRRIGATION
COMPANY
(*Defendant*) Respondent

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**IN THE SUPREME COURT OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

*In the
Supreme
Court of
Alberta*

BETWEEN:

KNIGHT SUGAR COMPANY, LIMITED,

Plaintiff,

—and—

THE ALBERTA RAILWAY AND IRRIGATION
COMPANY,

Defendant.

No. 1.
Amended
Statement
of Claim.
3rd July,
1933.

10

RECORD OF PROCEEDINGS

PART 1.

No. 1.

Amended Statement of Claim.

IN THE TRIAL DIVISION OF THE SUPREME COURT
OF ALBERTA

1. THE Plaintiff is a body corporate, incorporated under the laws of the Province of Alberta, with power to hold and own lands and mines and minerals, and the right to work and win such mines and minerals.

20 2. THE Defendant is a body corporate, incorporated under and by a special or private Act of the Parliament of Canada, being 4 Edward VII (1904) cap. 43, and under and by which Act the Alberta Railway and Coal Company, a body corporate, and The Canadian Northwestern Irrigation Company, a body corporate, were merged and amalgamated under the name of and in the Defendant, which thereupon became the owner of all the assets, including lands, of the said The Alberta Railway and Coal Company and of the said The Canadian Northwestern Irrigation Company, subject to all Agreements, obligations, rights, benefits and contracts then subsisting.

*In the
Supreme
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No. 1.
Amended
Statement
of Claim.
3rd July,
1933.
continued

3. THE Head Office and principal place of business of the Defendant in the Province of Alberta, is situate at the City of Calgary, in the Province of Alberta.

4. ON the 19th day of July, 1901, an Agreement in writing was entered into by and between the said The Alberta Railway and Coal Company, of the First Part, the said The Canadian Northwestern Irrigation Company, of the Second Part, and Jesse Knight, then residing at Provo, in the State of Utah, one of the United States of America, Mining Operator, of the Third Part.

5. UNDER and by the said last mentioned Agreement, the said The Alberta Railway and Coal Company agreed to demise and lease to the said Jesse Knight, 226,000 acres, more or less, of land, therein referred to as "Parcel No. 2," (as shown on a Plan annexed to said Agreement) the property of the said The Alberta Railway and Coal Company, and situate in Townships 2, 3, 4, 5 and 6, Ranges 19, 20 and 21, West of the 4th principal Meridian, in the Province of Alberta, the said lands to be held by the said Jesse Knight as tenant until the 1st day of September, 1903, and that if on that date the said Jesse Knight produced satisfactory evidence that he had complied with certain requirements contained in said Agreement, and if the said Jesse Knight so desired, the said The Alberta Railway and Coal Company would enter into an Agreement with the said Jesse Knight for the sale to him at and for the price and on the terms set out in said Agreement. No reference to mines and minerals was made in the said Agreement. 10 20

6. BY an Agreement in writing made and executed on the 7th day of April, 1903, the said Jesse Knight agreed to pay to one, John W. Taylor, of Salt Lake City, in the said State of Utah, a portion of the profits derived or to be derived by the said Jesse Knight from and out of the sale of the said lands.

7. BY an Agreement in writing made and entered into on the 7th day of April, 1903, the said Jesse Knight and Amanda Knight, his wife, and the said John W. Taylor, assigned to the Plaintiff, its successors and assigns, all their and each of their right, title, and interest in and to the said lands, notice of which assignment was given in writing on the said last mentioned date to the said The Alberta Railway and Coal Company, and to the said The Canadian Northwestern Irrigation Company. 30

7a. BY Articles of Agreement made on the 25th day of November, A.D. 1903, The Alberta Railway and Coal Company agreed to sell to the Plaintiff, and the Plaintiff agreed to purchase from The Alberta Railway and Coal Company the lands, hereditaments and premises mentioned and described in the said Articles of Agreement, for the prices and on the terms set forth in the said Articles of Agreement. By the said Articles of Agreement the said Alberta Railway and Coal Company did inter alia for itself, its successors and assigns, covenant, promise and agree to 40

and with the Plaintiff, its successors and assigns, to convey and assure or cause to be conveyed and assured to the Plaintiff, its successors or assigns, by a good and sufficient Deed in fee simple, all those the said pieces or parcels of land described in the said Articles of Agreement, together with the appurtenances thereto belonging or appertaining, freed and discharged from all encumbrances, but subject to the conditions and reservations expressed in the original Grant from the Crown.

*In the
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—
No. 1.

Amended
Statement
of Claim.
3rd July,
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continued

7b. BY the said Articles of Agreement the Plaintiff and the said Jesse Knight acknowledged that the covenants of the Alberta Railway and Coal Company contained in a certain Agreement bearing date the 19th day of July, A.D. 1901, made between the said Jesse Knight, the Alberta Railway and Coal Company and The Canadian Northwest Irrigation Company, had been fully carried out and discharged by the execution by it of the said Articles of Agreement, and for their successors, heirs, executors, administrators and assigns, discharged and released the said Alberta Railway and Coal Company from all claims of every kind on the part of either of them under the said Agreement and in respect of the lands in the said Agreement described as Parcel Number Two.

8. THE grants from the Crown of all the said lands to the said The Alberta Railway and Coal Company were issued and delivered on or about the 23rd day of February, 1899.

9. THE said Crown Grants contained the following reservation and provision:

“SAVING, excepting and reserving unto us (meaning the Crown) our successors and assigns, all coal mines, coal pits, seams, and veins of coal, as well open as not open, which shall or may be wrought, found out or discovered, or which may exist within, upon or under the said lands, together with full power to work the same and for this purpose to enter upon and use and occupy the said lands, or so much thereof, and to such an extent as may be necessary for the effectual working of the said mines, pits, seams and veins.”

10. THE said The Alberta Railway and Coal Company obtained all of the said lands by the said Grants from the Crown as a subsidy, in aid of the construction of their railway, from a point at or near Lethbridge, in the said Province, to a point on the International boundary between Canada and the State of Montana, one of the United States of America, and, notwithstanding the reservations referred to in Paragraph 9 of this Statement of Claim, were entitled to all of said lands without any reservation by the Crown of mines and minerals, except gold and silver.

11. ON or about the 20th day of December, 1912, the Defendant, pursuant to the Agreements hereinbefore referred to, made, drew, wrote, prepared, executed and subsequently delivered to the Plaintiff, Transfers

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No. 1.
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of Claim.
3rd July,
1933.

continued

under the Land Titles Act of the Province of Alberta, under and by which it transferred to the Plaintiff all the Defendant's estate and interest in the said lands, (with the exception of certain portions thereof, title to which the Defendant did not acquire), "Excepting therefrom all coal and other minerals in and under the said land, and the right to use so much of said land or the surface thereof as the Company may consider necessary for the purpose of working and removing the said coal and minerals, and any portion of said land heretofore taken for roads or public purposes."

12. ON or about the 12th day of March, 1913, the Plaintiff registered the said Transfers in the Land Titles Office for the South Alberta Land Registration District and Certificates of Title of the said lands were thereupon issued to and in the name of the Plaintiff, and duplicates thereof delivered to the Plaintiff. 10

13. THE Plaintiff asserts and claims that it is the owner of and entitled to all mines and minerals in or under the said lands, (subject only to the reservations and exceptions which the Crown was entitled to reserve or except, and did reserve or except in the said Grants of the said lands from the Crown) with the right to work and win the same, which assertion and claim the Defendant has repeatedly denied and still denies and disputes, claiming to be the owner of all mines and minerals in and under the said lands. 20

14. THE Defendant has alienated portions of the said mines and minerals belonging to the Plaintiff.

15. THE value of the mines and minerals referred to in Paragraph 13 hereof exceeds \$100,000.00.

THE PLAINTIFF CLAIMS AND PRAYS:

- (a) A declaration of this Honourable Court that the Plaintiff, under the Agreements referred to in its Statement of Claim, and on the registration of the Transfers of the lands in question, became the owner of and entitled to all mines and minerals other than coal and precious metals, and the right to work and win the same. 30
- (aa) **In the alternative a declaration that the Plaintiff is the owner of and entitled to the Petroleum and Natural Gas Rights in and under the lands described in the Articles of Agreement referred to in Paragraph 7a. hereof.**
- (b) An account of all mines and minerals alienated by the Defendant.
- (c) Judgment for the value of mines and minerals so alienated. 40
- (d) Such further and other relief as to this Honourable Court may seem meet.
- (e) Its costs of and incidental to this action.

DATED at the City of Calgary, in the Province of Alberta, this 3rd day of July, A.D. 1933, and DELIVERED by DAVID HORTON ELTON, K.C., Solicitor for the Plaintiff, whose address for service is at the Office of A. Macleod Sinclair, K.C., Barrister and Solicitor, Room 601, Herald Building, Calgary, Alberta.

ISSUED out of the Office of the Clerk of this Honourable Court at the City of Calgary, in the Province of Alberta, this 3rd day of July, A.D. 1933.

"V. R. JONES"
Clerk of the Court.

10

SEAL.

*In the
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—
No. 1.
Amended
Statement
of Claim.
3rd July,
1933.

continued

No. 2.

Statement of Defence

No. 2.
Statement
of Defence.
5th September,
1933.

1. The Plaintiff is not empowered to hold or own mines or minerals or to work or win such mines or minerals.

2. In the alternative, at the time of the matters alleged in the Statement of Claim the Plaintiff was not empowered to hold or own mines or minerals or to work or win such mines or minerals.

20 3. The Defendant was not merged or amalgamated with the Alberta Railway and Coal Company and the Canadian North West Irrigation Company or either of them by the Statute, 4, Edward VII, (1904), Chapter 43, and did not, by virtue of the said statute, become the owner of all or any of the assets of the Alberta Railway and Coal Company or of the Canadian North West Irrigation Company.

4. The Head Office of the Defendant Company is not situate in the Province of Alberta, but in the City of Montreal, in the Province of Quebec.

30 5. No Agreement was entered into between the Alberta Railway and Coal Company and the Canadian North West Irrigation Company, or either of them, with Jesse Knight on the 19th of July, 1901, or any other date.

6. The Alberta Railway and Coal Company did not agree to demise or lease to Jesse Knight 226,000 acres of land or any other area on the terms alleged in paragraph 5 of the Statement of Claim, or any other terms, and did not agree with the said Jesse Knight to enter into an agreement with him for the sale to him of any of the said lands on any terms.

7. The said Jesse Knight did not by Agreement of 7th April 1903, or on any other date agree to pay to John W. Taylor any portion of the profits of the sale of any of the said lands.

*In the
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No. 2.
Statement
of Defence.
5th September,
1933.
continued

8. The right, title and interest, if any, of the said Jesse Knight, Amanda Knight, his wife, and the said John W. Taylor, or any of them, was not assigned to the Plaintiff on the 7th day of April 1903, or any other date, and no notice of any such assignment was given to the Alberta Railway and Coal Company or to the Canadian North West Irrigation Company in writing, or otherwise.

9. The Alberta Railway and Coal Company were not entitled to the grant of the lands mentioned in paragraph 10 of the Statement of Claim without any reservation by the Crown of mines and minerals, except gold and silver, but were entitled to Crown grants upon the conditions 10 fixed by the Orders-in-Council made in respect thereof, and under and by virtue of various Orders-in-Council the said Alberta Railway and Coal Company became entitled to patents of the said lands subject to a reservation to His Majesty of all coal and other minerals.

10. The Transfers mentioned in paragraph 11 of the Statement of Claim were not made pursuant to the Agreements mentioned in the Statement of Claim or any of them.

11. The Defendant denies that the Plaintiff is the owner of or entitled to the mines and minerals in the lands referred to in paragraph 13 of the Statement of Claim, or any of them. 20

12. The Defendant has not alienated any mines or minerals belonging to the Plaintiff.

13. The value of the mines and minerals referred to in paragraph 13 of the Statement of Claim does not exceed \$100,000.00.

14. ALTERNATIVELY and in answer to the whole of the Statement of Claim, the Defendant says that the Agreement of 19th July 1901 alleged in paragraphs 4 and 5 of the Statement of Claim and all the obligations of the Alberta Railway and Coal Company thereunder were fully satisfied and discharged under and by virtue of an Agreement dated 25th November, 1903, made between the Alberta Railway and Coal Company 30 and the Plaintiff (to which Jesse Knight was a party) whereby the Plaintiff and the said Jesse Knight released and discharged the said Alberta Railway and Coal Company from all claims of every kind on the part of either the Plaintiff or the said Jesse Knight under the said Agreement of 19th July, 1901, and in respect of the lands in the said Agreement described as Parcel No. 2.

15. ALTERNATIVELY and in answer to the whole of the Statement of Claim, the Defendant says that after the accruing of the Plaintiff's claim, if any, to the said lands or to the mines and minerals therein the Defendant executed and delivered to the Plaintiff and the Plaintiff accepted and received from the Defendant Deeds or Transfers for all of the said lands, and the Plaintiff's claim was and is thereby merged and extinguished. 40

16. ALTERNATIVELY and in answer to the whole of the Statement of Claim the Defendant says that the Plaintiff's right, if any, to bring this action for the recovery of the mines and minerals in or under the lands referred to in the Statement of Claim did not first accrue to the Plaintiff within twelve years before the commencement of this action, and the Plaintiff's alleged claim was and is barred by the Real Property Limitation Act 1874, and the Defendant pleads the provisions of the said Statute and the provisions of the Statute, R.S.A. Chapter 90, Section 3, in bar of the Plaintiff's claim.

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Supreme
Court of
Alberta*

No. 2.
Statement
of Defence.
5th September,
1933.

continued

10 17. ALTERNATIVELY and in answer to the whole of the Statement of Claim the Defendant says that all the facts were within the knowledge of the Plaintiff for a period of twenty-one years or more before the commencement of this action, and that the Plaintiff is guilty of laches and is not entitled to seek any remedy, legal or equitable, against the Defendant.

DATED at the City of Calgary, in the Province of Alberta, this 5th day of September, A.D. 1933, and DELIVERED by George A. Walker, Solicitor for the Defendant whose address for service is at the Office of the said George A. Walker, Room 9, Department of Natural Resources Building, of the Canadian Pacific Railway Company, corner Ninth Avenue and First Street East, Calgary, Alberta.

No. 3.

Application for Amendment to Statement of Claim.

Trial of this action held before the Honourable Mr. Justice Ford on the 26th day of June, A.D. 1935.

A. Macleod Sinclair, Esq., K.C.,
D. H. Elton, Esq., K.C., —and—
L. A. Walsh, Esq., K.C.

appeared for the Plaintiff.

30 A. L. Smith, Esq., K.C.,
J. McCaig, Esq., —and—
Eric Stuart, Esq.
W. L. Walker, Esq.

appeared for the Defendant.
Official Court Reporter.

No. 3.
Application
for Amend-
ment to
Statement
of Claim.
26th June,
1935.

MR. SINCLAIR: I have given notice I intend to move for an amendment to the Statement of Claim by adding two paragraphs to the Prayer. I understand there is no objection to the amendment provided I make an admission which is desired by my learned friends as to the question whether the petroleum and natural gas are minerals. I think I know what admission my learned friends want and I will state it. The admission I

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am prepared to make is that at all times material to the matters involved in this action petroleum and natural gas came within the definition of minerals.

MR. SMITH: That is it. My learned friend admits as a matter of fact—

MR. SINCLAIR: And for the purposes of this action—

MR. SMITH: And 'as a matter of fact' that is the only addition I want to make.

MR. SINCLAIR: The additions to the Statement of Claim are setting forth an agreement of November 1903 and another averment arising out of that agreement and in the Prayer an alternative claim that the Plaintiff, the owner, is entitled to petroleum, etc. referred to in paragraph 7a. On the assumption that your Lordship may allow the amendment I have prepared a Statement of Claim with the amendment in. 10

MR. SMITH: No objection my Lord.

MR. SINCLAIR: The amendments appear in red.

No. 4.

Opening of Proceedings at Trial.

MR. SINCLAIR: This action is for a declaration of the rights of the parties to the minerals underlying certain lands situated in the southern part of this Province. The Plaintiff is a Provincial Company and the Defendant Company was incorporated by a special Act of the Parliament of Canada and acquired as the result of their incorporation the rights and undertook the obligations of their predecessors. In 1901 an agreement was entered into between one Jesse Knight and the Alberta Railway and Coal Company and the Canadian Northwestern Irrigation Company for the acquisition of certain lands by the Plaintiff. This agreement was in the nature of an option. Certain things had to be done by the Plaintiff to entitle him to the agreement for the sale of the lands. In April 1903 there was an assignment of a portion of the rights under that agreement but that is of no consequence in this action. On the 7th of April 1903 the Plaintiff in this action acquired the rights in the agreement and on the 25th of November 1903 the agreement was entered into between the Plaintiff and the Alberta Railway and Coal Company by which it was acknowledged that the covenant imposed upon the various parties by the agreement of July 1901, had been performed and it was agreed to sell the lands to the Plaintiff on terms set forth and the agreement contains a covenant describing without any reservation the covenant for title was that the coal company would convey the lands to the Plaintiff subject to the reservations contained in the original grant from the Crown. Now the lands in question had been acquired by the Railway 20 30 40

No. 3.
Application
for Amend-
ment to
Statement
of Claim.
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No. 4.
Opening of
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at Trial.
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Company as a subsidy in connection with the construction of the Railway and patents were issued by the Crown giving title to the Railway and Coal Company and the reservation in the Crown grant "Saving, excepting and reserving unto us, our successors and assigns, all coal mines, coal pits, seams and veins of coal"). Now following upon the agreement of 1903 payments were made from time to time by the Plaintiff Company and as the Plaintiff became entitled to title to the lands and on payment of the necessary moneys the Defendant either conveyed, transferred the lands so bought, either direct to the Plaintiff Company or in some

10 instances direct to the nominee of the Plaintiff Company. The transfers which were given by the Defendant to the Plaintiff was a transfer of the lands with a reservation and in some of the transfers covering 28,090 acres it was a reservation and in transfers covering 194,924 acres it was an exception. Now the situation is this, we have a Crown grant with a reservation of coal only; we have the agreement with a covenant conveying the land reserving subject to the reservation in the original grant from the Crown and then we have a transfer by the Defendant Company to the Plaintiff in which the reservation was a reservation of all coal and other minerals. Now our contention is that on a proper construction

20 of the transfer that only coal is reserved and in any event that petroleum and natural gas is not reserved. I propose to prove the chain of title and to have some evidence, some geological evidence and ask your Lordship to construe the document and to find I am entitled to the relief which I ask. I am not asking for anything more than I have got. I appreciate that if I have not got it in my title then I can't have it because the executory agreement of 1903 was merged in the title, at least that is all I can successfully argue in this Court because this Court has made it perfectly clear that that is the law although Mr. Justice Beck has doubted whether a transfer under the Land Titles Act has the same effect as a

30 deed but that suggestion has not been acquiesced in in this Province so if it has to be decided otherwise it will have to be decided elsewhere.

THE COURT: How far did that case go?

MR. SINCLAIR: To the Supreme Court of Canada and Mr. Justice Idington who dissented viewed with great favour the decision of Mr. Justice Beck and later Mr. Justice Beck repeated his own view in Stuart and the C. & E., saying he was doing so because he apprehended that that case might go to the Privy Council. My view is that the Court of Last Resort in this country so far as it is concerned the matter is settled.

THE COURT: How far did Franz and Hansen go?

40 MR. SINCLAIR: The length of applying to a transfer and a title acquired under the Land Titles Act here the doctrine applicable in England to the merging of the prior executory agreement in the deed. Mr. Justice Beck points out the difference, the transfer is merely an order upon the Registrar to make a change in the title.

THE COURT: If Mr. Justice Beck was right how far would that carry you?

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Opening of
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continued

*In the
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No. 4.

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at Trial.
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continued

MR. SINCLAIR: It might carry me to the length of saying I am entitled to everything except the coal. I have pleaded my agreement here merely for the purpose if I am taken elsewhere that I can rely upon the executory agreement. I am relying now, on the construction of the transfer. It would not have been necessary to plead it but I have pleaded it so that if I am taken elsewhere, to another Court, the matter is still open.

THE COURT: You are not asking me to express an opinion.

MR. SINCLAIR: I would be delighted to have it but I do not think your Lordship would give some opinion unless it was to have some effect.

THE COURT: Was the question of estoppel discussed.

10

MR. SINCLAIR: It was touched on. Mr. Justice Idington said if a litigious spirit had existed probably the matter would have been brought before the Court earlier than it had been.

THE COURT: I mean having taken a transfer.

MR. SINCLAIR: That is one of the grounds on which the doctrine is based. The case I am going to argue is this that given a transfer that I have got what does it mean and my submission is that only the coal is reserved and at the very outside coal and minerals of a like kind and that does not include petroleum and natural gas. I propose to submit portions of the Examination from Discovery of Albert Newman.

20

No. 5.

Plaintiff's
Evidence.

Extracts
from
Examina-
tion for
Discovery
of Albert
Newman
and filing
Exhibits.

No. 5.

**Extracts from Examination for Discovery of Albert Newman,
The Officer of the Defendant Company.**

“ Examination for Discovery of Albert Newman, the officer of the Defendant Company, Produced for Examination for Discovery, taken before V. R. Jones, Esq. Clerk of the Supreme Court of Alberta, Judicial District of Calgary, at the Court House, Calgary, on the 26th day of April A.D. 1935, at 11 a.m.

L. Walsh, Esq., K.C., of

Messrs. A. Macleod Sinclair & Walsh

James McCaig, Esq.

H. E. Cutler, Esq.

Appeared for the Plaintiff.

Appeared for the Defendant.

Official Court Reporter.

30

ALBERT NEWMAN, having been first duly sworn, examined by Mr. Walsh, said:

1. Q. Mr. Newman, you are an officer of the Defendant Company?
- A. Yes.

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- No. 5.
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Evidence.
—
Extracts
from
Examina-
tion for
Discovery.
of Albert
Newman
and filing
Exhibits.
continued
2. Q. And you are the officer produced for Examination for Discovery for that Defendant? A. Yes.
3. Q. And you have been sworn? A. Yes.
4. Q. What office do you hold with the Defendant, The Alberta Railway and Irrigation Company? A. General Superintendent of lands.
5. Q. When did the Defendant Company come into existence? A. I am not in a position to say without looking up the records.
- 10 6. Q. It was incorporated I take it by special Act of Parliament, was it, can you supply the date Mr. McCaig.
MR. McCAIG: I think you will find it was in 1904, if I thought you were going to ask that I would have brought up the Statutes. When you say the Defendant Company, you mean the Alberta Railway and Irrigation Company?
MR. WALSH: Yes.
7. Q. MR. WALSH: And is it correct to say that that Company was incorporated, the Defendant Company was incorporated to take over the Alberta Railway and Coal Company and the Canadian North West Irrigation Company?
20 MR. McCAIG: That will rest on the terms of the Statute I think.
WITNESS: I am not competent to express an opinion without the Statute, I am not familiar with them.
8. Q. MR. WALSH: The reason I ask the question is that we plead in our Statement of Claim that this Defendant Company was incorporated and in that corporation were merged these other two companies and your solicitor in your Statement of Defence has denied that, have you not, perhaps I can put it this way, is it correct to say that this Defendant Company following upon its
30 incorporation took over the property, the contracts and the liabilities of the Alberta Railway and Coal Company and the Irrigation Company?
A. That is my understanding that they were the successors in title.
9. Q. Yes, now Mr. McCaig would you produce the agreement of July 19th, 1901, your Counsel produces Mr. Newman, an agreement made on July 19th 1901 between The Alberta Railway and Coal Company of the First Part, the Canadian Northwest Irrigation Company of the second part and Jesse Knight of the third part.
MR. McCAIG: It is only a copy you understand, the originals are in your possession.
40 MR. WALSH: You are satisfied that is a copy of the agreement of that date? And that these two companies entered into it.
(Document produced as Exhibit "1").
MR. SINCLAIR: Is there any question that the averment in the

Statement of Claim, paragraph 2 has to be proven, that is that the Alberta Railway and Irrigation Company acquired the assets and undertook the liabilities of the other two companies?

MR. SMITH: That is correct, there is no problem.

MR. SINCLAIR: The next portion of the discovery we are offering, we propose now to put in the agreement of July 1901, the 7th of April 1903 and the 25th of November 1903. Now I am putting them in on two grounds, one which I do not propose to argue but which I want on the record just proving the fact of that agreement being entered into. The other is that I want 10 to put them in as an aid to the construction of the transfer.

THE COURT: You have read down to what question?

MR. WALSH: Down to question 9, I will now read on.

"10. Q. Now that agreement Exhibit "1" as I understand it deals with two parcels of land described as parcel 1 and parcel 2, you know that is correct?

A. I am not familiar with the details of the agreement. I have not had an opportunity of going over it and I cannot speak definitely as to what it does cover."

MR. SINCLAIR: I now tender a copy of that document. As 20 far as I have been able to find out there is no original copy in existence.

Document Marked as Exhibit "1".

MR. SMITH: I am not taking objection to it on that ground. Dealing with what my learned friend Mr. Sinclair said I gather that the first reason he gave was that some day he might reach a Court beyond the Supreme Court of Canada and the document might be valuable to him at that time. My answer to that is Franz vs. Hansen. With respect to the second ground upon which he tendered it, namely that it is something to assist the Court in interpreting the deed, the transfers which were 30 later given, my submission now is that there is no possible way upon which evidence can be given to expand a deed, the terms of a deed, unless there be ambiguity latent in the deed itself. Now my suggestion to the Court is this that they, for the moment leave the tendering of these agreements until at a later time they put in the deeds which by arrangement between us will simply go in on production. What I have in mind is this that in this lawsuit that your Lordship is not entitled, nor are my learned friends entitled, to put in anything except the transfer of the title which they got as a result of that transfer and 40 having done that you find some ground to take evidence to explain these things well and good. Now my position is that no evidence can be called in this case which will be of any value which will expand the very plain words which are in that title.

THE COURT: Have you the report of Franz & Hanson there?

MR. SMITH: Yes, my Lord.
(Shown).

THE COURT: Have you the second statement somewhere Mr. Sinclair of the doctrine of merging one into the other?

MR. SINCLAIR: Yes, my Lord. I am quoting from a judgment of Mr. Justice Beck.

THE COURT: Let me see it. I suppose Mr. Smith is right to this extent that the ruling could not be made until after the documents are in which gave rise to the objection.

10 MR. SINCLAIR: I would like to put them in chronologically and they can go in subject to objection.

THE COURT: I suppose Mr. Smith will take your undertaking to put in the deeds of the transfers?

MR. SMITH: Oh yes, we won't have any difficulty. My thought was that your Lordship may do in this case, because it is of some importance and may go some distance, that these questions with respect to objections to evidence, that you may admit them subject to them and then, say when you have given the matter consideration, that you are disregarding certain things. I know you have adopted that method and it might be of some value to both of us in avoiding bringing about abortive trials on technical grounds.

20 THE COURT: If you have said all you have to say about the admissibility of these I make the ruling now because I have a definite opinion now.

MR. SMITH: I am content that you should make it now.

THE COURT: If I decide to admit the documents now the objection raised is always open.

30 MR. SMITH: Very well my Lord, I take it this is subject to the objection.

MR. WALSH: I tender as Exhibit "1" copy of agreement of July 1901.

MR. SINCLAIR: Would it be more convenient to mark each Exhibit as it goes in or at the close of the discovery?

THE COURT: I think perhaps leave it until the end of the discovery.

MR. WALSH: I go back to question 10.

"10. Q. Now that agreement Exhibit "1" as I understand it deals with two parcels of land described as parcel 1 and parcel 2, you know that is correct.

40 A. I am not familiar with the details of the agreement, I have not had an opportunity of going over it and I cannot speak definitely as to what it does cover.

11. Q. I do not think there is any dispute about it, it deals with parcel

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I which contains approximately fifty-seven thousand acres and parcel No. 2 which contains approximately two hundred and twenty-six thousand acres, now can you tell me when the Crown grant for those two parcels of land was issued?

A. I have no information from which I can make a statement as to that, there are records, of course, which would cover it.

12. Q. Records in the possession of your company? A. Yes.

13. Q. Would you inform yourself as to the date of the Crown grant and furnish it to me?

MR. McCAIG: Well you do not want information about the 10
fifty-seven thousand acres.

MR. WALSH: They are both dealt with in the same agreement. I realize our lawsuit is about the two hundred and twenty-six thousand acres.

MR. McCAIG: What I mean is I do not think I should be asked to give you information or Mr. Newman asked to give you information about something which is not in dispute at all."

I now put in questions No. 23 to 23.

"23. Q. Then you have a further agreement of the same date between Knight and Taylor as assignors and the Knight Sugar Com- 20
pany as assignee, is that an executed copy?

MR. McCAIG: It purports to be.
Document marked as Exhibit "3".

24. Q. Now then the next agreement is an agreement of November 25th 1903, you recognize that agreement as one executed by the proper officers of the Alberta Railway & Coal Company?

A. Yes.

Document marked as Exhibit "4".

25. Q. Now Mr. Newman that last agreement Exhibit 4 among other things provides for the sale of 223,124.89 acres of land to the 30
Knight Sugar Company at a price of \$2.00 an acre, that is correct? A. Yes.

26. Q. And my understanding is, correct me if I am wrong, that in the years following 1903 transfers were given by your company from time to time as requested by the Knight Sugar Company?

A. I understand that is so. The idea was that as the Knight

27. Q. The idea was that as the Knight Sugar Company sold a piece of property and got the money they would pay the money over to you and you would issue the transfer as required?

A. I do not know what the understanding was but I believe trans- 40
fers were issued pursuant to the agreement as called for.

28. Q. And I am also instructed that those transfers would be in some instances to this Plaintiff, the Knight Sugar Company Limited, or to its assignees, its purchasers?

A. I presume that would be the case."

I now tender agreement dated April 7th, 1903.

Document Marked as Exhibit "2".

MR. SMITH: I am taking the same objection.

THE COURT: Covered by the previous ruling.

10 MR. WALSH: Perhaps I should state here this other agreement of April 7th 1903 was an agreement between Knight and one Taylor and I think my learned friends agree it has nothing at all to do with this action and there is no object in putting it in. It is here if they want it put in.

MR. SMITH: I am objecting to that going in or any other agreement going in prior to the transfers. I have the additional objection, the principal one, that it has nothing to do with this agreement.

MR. SINCLAIR: The only reason we mention the other one is that we are not putting it in.

20 THE COURT: Exhibit 2 is the agreement Exhibit 3 on the examination?

MR. WALSH: Yes, my Lord. I tender a copy of agreement made November 25th 1903 between the Alberta Coal Company and Knight.

MR. SMITH: I am taking the same objection.

THE COURT: I understand you are not objecting to it because it is a copy.

MR. SMITH: No, my Lord.

Document Marked Exhibit No. "3".

30 MR. SMITH: May I take it that my objection—my learned friend now goes on to deal with the contents of the agreement by oral questions and I have the same objection to these questions and answers as I have to the agreement itself. May I take it that my objection is noted in that way and that your Lordship makes the same ruling.

THE COURT: Yes, if the only objection to the other questions is the question of the admissibility of the document. The objection will now be taken as being repeated and I may say that if I change my mind about the ruling I have made I will state to you that I will disregard . . .

40 MR. SMITH: Yes, my Lord.

MR. WALSH: I will now put in questions 43 to 46.

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- "43. Q. Now Mr. Newman, your affidavit of documents lists as item 17 books of account, ledgers, etc. what do those books of account and ledgers contain with reference to this lawsuit? A. Details of the sales and purchase price, areas, moneys paid.
44. Q. As I take it in those books would be a record of the agreement of November 25th, 1903 which is Exhibit "4," it would be a record of the sales made under that agreement? A. Yes.
45. Q. And then records of the various payments received by your company from time to time to apply on that purchase? A. Yes.
46. Q. And the transfers given by you? A. It probably would not show the transfers but it would show all these payments. 10
49. Q. MR. WALSH: Perhaps I can put it this way, those books would show that the full purchase price called for by the agreement Exhibit 4 has been paid to your company? A. Yes.
58. Q. What I am getting at is this, that between 1903 and 1912 or 1913 numerous transfers were issued in accordance with this agreement? A. Yes."

MR. WALSH: Now my Lord, I will read the agreements put in. May I take it with respect to these agreements it will be unnecessary to read the whole agreement. Exhibit "1" is an agreement dated the 19th day of July, 1901. It is in fact an option. Then Exhibit "2" is the agreement made the 17th of April 1903. Then we come to the agreement Exhibit "3" dated the 25th of November 1903. The part with which we are concerned is the part known as "2" the 223,000 acres of land. Then my Lord, by agreement with Counsel for the Defendant we tender first the certified copy of the Crown grant with respect to a part of this parcel and also by agreement we are putting in one or two complete chains of title as dealing with this land. Your Lordship will appreciate there are many Crown grants. 20

MR. SMITH: I am not objecting to them going in because they are not proven. I am taking the same objection with respect to the Crown grant that anything prior to the deed under which they hold is something which the Court is not permitted to look at. 30

THE COURT: You say if you are right, you suggest the Crown grant does not have any other effect than giving them title to convey whatever you did.

MR. SMITH: Yes. I take the general position that once the deed has been executed no one can go back for any purpose whatever.

THE COURT: I am admitting this subject to the objection.

Document Marked Exhibit No. "4". 40

MR. WALSH: I am putting in as Exhibit 5 a certified copy of the Certificate of Title which includes this question of land dated the 20th of September 1901.

Document Marked Exhibit No. "5".

MR. WALSH: I tender as Exhibit No. 6 a certified copy of transfer of this land dated the 22nd of July 1913.

Document Marked Exhibit No. "6".

MR. WALSH: I am tendering as Exhibit No. 7—

Document Marked Exhibit No. "7".

MR. SINCLAIR: That is a typical title we have put in now.

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Evidence of John Andrew Allen.

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JOHN ANDREW ALLEN, sworn, examined by Mr. Sinclair:

10 Q. Perhaps you will tell us what your qualifications are with regard to geology and kindred subjects?

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A. I am a geologist, obtaining my undergraduate experience at McGill University and a post graduate experience at Massachusetts Institute of Technology. I started my practical work in geology in 1905 and since that time have been working every year in Western Canada. Since 1909 I spent the greater part of my time on the geology of Alberta and the extreme Eastern part of British Columbia. I have been a resident of Alberta since 1912 and head of the Department of Geology at the University of Alberta.

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tion.

20 Q. Will you tell us then if coal is in the geological and mining world the same as natural gas? A. It is not.

Q. Is coal the same as petroleum?

A. It is not, not in the detailed sense.

Q. Is there any similarity in the method of winning coal and that of winning natural gas? A. All coal is won from the immediate surface or by means of shafts or drifts from underground seams. Petroleum and natural gas are obtained by drilling and tapping the reservoirs containing the petroleum or the natural gas. The only exception is the case where in France the oil beds have been tapped by tunnel and a certain
30 percentage of the oil is allowed to run in it.

Q. Is that method known or is it used in the North American Continent? A. It is not. It has been largely abandoned in France.

Q. Coal is to be found where in relation to the place where it becomes coal? A. Coal is always found where the plant material and other debris comes with the plant material, accumulates. In other words coal is found in place where it has been deposited.

Q. What would you say in that regard as to petroleum?

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A. Petroleum is not found in the place where the materials that have given rise to the petroleum has accumulated.

Q. What about natural gas in that respect?

A. Natural gas is not found in the place in which the material from which the natural gas has been derived in accumulations.

Q. Does the expression petroleum include rock strata of the same homogeneous character and is petroleum generally worked or capable of being worked in the same method as coal? A. Certainly not.

Q. Applying the same question to natural gas what would you say?

A. I would give the same answer. 10

Q. Are there other minerals of the same kind as coal—and I use the word "other minerals"—the same species? A. Yes, there are.

Q. Can you give us one or two examples? A. Well we have to distinguish between composition and origin. From the point of view of composition the most closely associated mineral to coal is graphite and the next mineral is known as diamond—that is from the point of view of composition, from the point of view of origin there are several ochres, the bog manganese, certain phosphites are formed in a manner similar to coal.

Q. Would you include either petroleum or natural gas amongst those minerals you have been speaking of? A. No sir I would not. 20

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tion.

(CROSS-EXAMINED BY MR. SMITH).

Q. Now you mentioned some mineral of the same kind of coal after graphite, I did not catch what that was? A. Diamond.

Q. Many of them in this country? A. I don't know, there have been a few found and leases taken up for them in British Columbia.

Q. Alberta? A. No sir.

Q. Mr. Walsh went out to Beiseker, were not these diamonds?

A. MR. WALSH: That was silver.

Q. MR. SMITH: Now Doctor, coal and natural gas and petroleum have many similarities haven't they? A. No sir, they have not. Except 30 that they consist in part of carbon and hydrogen and oxygen.

Q. In other words these three minerals have the same basic constituents have not they? A. No sir.

Q. Well carbon, hydrogen and oxygen, they are a combination of the three elements, carbon, hydrogen and oxygen? A. That is not all.

Q. That is not what I asked you, these are the basic elements?

A. Those are three elements.

Q. And they are utilized for the same purpose?

A. Utilized as fuel.

Q. And they are all combustible? A. No sir. 40

Q. What do you mean by that? A. Coal is not entirely combustible.

Q. They are the three most combustible minerals we know of in this country aren't they? A. Yes sir.

Q. And when you say coal is not entirely combustible, it is what we use in our engines and furnaces and so on to heat our houses? A. Yes.

Q. I suppose you mean combustion is not complete but it is used for that purpose? A. Yes.

10 Q. Natural gas is used for that purpose? A. Yes.

Q. And petroleum is used for that purpose? A. Yes.

Q. Do you know any minerals in the world more similar than coal, petroleum and natural gas? A. Well if we take minerals that belong to another class we find them related in the same way. Gypsum and anhydrite.

Q. From coal we can produce petroleum and it is done is it not?

A. They can produce oil but not petroleum.

Q. What is the distinction between the oil they produce?

A. The petroleum is a crude and natural product, oil is a product produced in the laboratory.

20 Q. The petroleum which we find in a free state is used for the production of gasoline and fuel oils generally? A. Yes.

Q. And oil which is produced from coal is used for identical purposes, that is true? A. It may, yes.

Q. What do you mean may be? A. Well that is one of the uses.

Q. We will take artificial gas plants throughout this country, they are invariably made from coal? A. Yes.

Q. In the City of Calgary we burn natural gas, in Winnipeg artificial gas which is produced from coal and utilized for identical purposes?

A. Yes.

30 Q. Now do you agree natural gas comes from petroleum?

A. Not necessarily.

Q. Well what is your theory, what is your idea? A. It is believed to come from the same original material from which petroleum comes.

Q. In other words the theory presently in vogue is that all petroleum and natural gas comes from sea life? A. Well it would be necessary to define what is meant by sea.

Q. The ocean? A. Not necessarily, it might come from such bodies of water which are not marine.

40 Q. Marine life? A. It might come from bodies of water which are brackish or possibly fresh.

Q. It comes from animals which live in water?

A. From organisms?

Q. From organisms that live in water? A. Yes.

Q. You mean living organisms? A. Yes.

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Q. That live in water, they both come from that source? A. Yes.

Q. Petroleum and natural gas both come from that source?

A. Yes. In part.

Q. Well that is the origin surely?

A. Of most petroleums and most natural gasses.

Q. Is the other worth bothering about, if so tell me about it?

A. There is a view quite largely expressed that our petroleum and natural gas may come from igneous material.

Q. That is the French school, the one that was held by Mr. Coste?

A. Yes. 10

Q. It was described as being of volcanic origin? A. Yes.

Q. I thought that theory had been generally discredited and you generally now think that it came from living organisms in water?

A. Yes.

Q. And so in any event they have a common origin, these two minerals? A. Yes.

Q. Go a step further and take Turner Valley where we have plenty of natural gas, that is true? A. Yes.

Q. Some forty miles from this City and supplies the gas to this City, that is true? A. Yes. 20

Q. I have always understood that we thought this natural gas came from a larger body of crude oil or petroleum which we have been seeking for around this country, is not that the generally accepted view?

A. Yes.

Q. Will you dispute it? A. Not in the case of Turner Valley.

Q. And that is a very large field in this country? A. Yes.

Q. And insofar as there have been discoveries of oil and gas in these properties presently in dispute, the nearest one the Raymond, you think no doubt that the gas there came from the same source?

A. No I have no proof that it came from the same source. 30

Q. I mean from oil? A. No sir.

Q. Where else can it come from? A. It might have come from a source of material direct.

Q. And entered into gas without going through the oil stage?

A. Yes.

Q. The hydro carbons of which natural gas is made up gives those?

A. Yes.

Q. And those are the tops, the top hydro carbons being part of those hydro carbons of which petroleum is made up, that is true?

A. That is the way it is expressed. 40

Q. There is not any doubt about it, is there, the analysis can, at least, prove that. There is no doubt about it is there? A. Repeat.

Q. That the hydro-carbons contained in the natural gas are simply the top hydro carbons of that general body of hydro carbons of which

petroleum is composed, by top I mean the lighter ones and more volatile?

A. Do you refer to that in the field or do you refer to that in the laboratory?

Q. Perhaps I can give it to you in another way. We will take a five gallon can of crude oil because they tell me that is the minimum with which one can work satisfactorily and we treat that by heat methods?

A. Yes.

Q. And the lighter hydro carbons go off first? A. Yes.

10 Q. And these lighter hydro carbons are the same hydro carbons that are in natural gas coming from Turner Valley? A. Yes.

Q. So that natural gas as we know it in this country are the same hydro carbons contained in crude oil and are those which pass off first on being treated by heat? A. They pass off at a lower temperature.

Q. All right we will put it this way, we apply heat to a five gallon can that is cold to begin with, we apply heat to it and it comes to a certain temperature and the top hydro carbons are passed off?

A. That will happen with a five gallon can of oil.

20 Q. That is all I am asking, so there is no doubt whatever, that petroleum contains these same hydro carbons we find in natural gas and will be driven from that petroleum by the application of heat? A. Yes.

Q. So far as minerals in this country go as yet we have found coal, we have found silver, and we have found a little gold, we have found copper and I think we have found graphite? A. Yes.

Q. We have not found any iron—oh yes we have. A. Yes.

Q. There is some iron in the east slope of the Rockies?

A. Yes, and east of the Rockies.

Q. Whereabouts? A. Foremost.

Q. And we also have found a number of clays? A. Yes.

Q. China clays? A. No sir.

30 Q. I mean clays for potting? A. Pottery clays.

Q. Is pottery clay a mineral? A. No.

Q. Now mineral surely is a combination of elements usually produced by chemical action is it not? A. Not always.

Q. I mean that is one way? A. Yes.

Q. There is one other way and what is that? You told us all about it in the Stuart case? A. The accumulation of the material by static pressure.

Q. Coal would answer that? A. Yes.

40 Q. You told my learned friend, Mr. Sinclair, and I think you are wrong—and don't think I am doubting you for a moment, that there was no oil mined in this country, that is in Canada, by direct methods of mining? What about New Brunswick? Didn't you tell us in the Stuart case that oil was mined there? A. The oil shales were mined there.

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Q. There is more than one way of producing oil, there are ways other than drilling for the production of oil? A. Yes.

Q. It was done in New Brunswick a few years ago? A. Yes.

Q. And it was done in Scotland? A. Yes.

Q. And it has been done in France? A. Yes.

Q. In other words the person who is going to extract it merely takes the most convenient and cheapest method he can to get at it?

A. There are two different types.

Q. Just agree with me now—you have a wonderful chap to help you out for his side, they mine for it, don't they or quarry? 10

A. Quarry or mine.

Q. That has been a well known method ever since we have had oil, ever since we utilized oil? A. That is a known method.

Q. Started by a man of the name of Young in Scotland, he began extracting oil first by mining shales and taking it out? A. Yes.

Q. That was before they had an oil well in the United States, he was the man who developed machinery for the purpose? That is true?

A. I presume he was.

Q. So that you would have no hesitation in agreeing with me that one method of getting oil was mining for it? A. Mining the source beds. 20

Q. Yes, exactly, that is the only way you get any mineral, that is outside of placer work—no I am wrong you get salt? A. And sulphur.

Q. And salt is a mineral? A. Salt is a mineral.

Re-Exam-
ination.

(RE-EXAMINED BY MR. SINCLAIR)

Q. You are speaking of the mining from the source beds, this oil which is produced in Scotland in Linlithgowshire and part of Lanarkshire, explain how that is done? A. The shales are excavated by various methods and no oil is obtained from them until they are in some cases ground and put into retorts and heated very highly in the laboratory.

Q. And before you can get oil by that method you must have the 30 source beds from which you can dig the shale? A. It is source beds.

Q. And do you know any beds of that kind in Alberta? A. There are no oil shales in Alberta except in very thin layers. There are sands saturated with bitumin at MacMurray.

Q. But the sands at MacMurray are entirely different from the shales, have no resemblance to the shales in New Brunswick and Scotland? A. No sir, they are containing the oil, they have acted as a sponge, not source beds.

Q. The oil shale is the source beds you spoke to my learned friend about? A. The source beds. 40

Q. You spoke about oil being got from coal, were you referring to the recent experiments instituted in Great Britain? A. I had in mind those.

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Q. Yes, I thought you had. A. It is distillates.

Q. The furthest they have got yet, they have got a subsidy from the Government, they may be able to run there commercially? A. Yes.

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Q. It can not stand on its own feet yet? A. That is my knowledge of it.

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10 Q. You get artificial gas, such as Winnipeg, that is got from coal?
A. Yes.

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ination.

Q. Is that the same sort of gas as natural gas? A. No sir.

Q. Is there any resemblance, what is the difference? A. It is artificial gas.

continued

MR. SMITH: It is hydro carbons that burn? A. Yes.

Q. MR. SINCLAIR: is there any other oil field that you know of similar to Turner Valley? A. I don't know of any in the world.

Q. Is there any reason to believe that the area included in this action is a field in any way similar to Turner Valley?

A. None whatever.

20 BY MR. SMITH:

Q. Is there any reason to disbelieve it? A. Yes.

Q. Take the Ranchmen's Well area, is there any reason to believe that that is a similar field to Turner Valley?

A. No, I don't get your question.

Q. I am speaking of the Ranchmen's Oil near Aldersyde, Mr. Sinclair asked you with respect to these lands, if there was any reason to believe there was a similar field to the Turner Valley and your answer was "no"? A. My answer was no.

30 Q. And as a matter of fact why do you say that? A. Simply because the structural conditions are not similar to those in Turner Valley.

Q. And that well, the identical gas coming from that well?

A. No sir.

Q. Why do you say that? A. It is not a similar gas.

Q. Why? A. That is my interpretation.

Q. Why do you say that? A. It is not the same product, it is not Turner Valley gas.

Q. It is a very highly volatile product? A. Yes.

Q. It is a similar product? A. No.

Q. Laymen could not tell the difference? A. Yes.

40 Q. How? A. It is quite a different looking oil to anybody.

Q. It is as pure white as the purest water? A. I have not seen that.

Q. Then you don't know. I am suggesting that oil coming out there

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is as pure in whiteness or lack of colour, as anything that ever came from Turner Valley, now that being so would you say it was an indication it was a different sort of field, granted that it may be a field?

A. Yes, because it has a similar colour does not mean it is the same kind of product.

Q. There is a complete lack of colour, that is white naphtha?

A. I have a sample from the same well which is not white.

Q. So have I, plenty. I am telling you at one time it was that?

A. I did not see that.

Q. I am not going to ask you to accept my word, I will ask you something else. You gave evidence in the Stuart case in 1926 I think and I am reading some questions and answers and this question was put to you "As a matter of fact in Canada so far as you know there is no method of obtaining oil except by drilling for it, that is the only practice—no in Northern Alberta, that is not the case, you are speaking of the tar sands? A. Yes. Q. I am speaking now of oil and gas? A. In Alberta, that is the case." These answers are correct? A. Yes. 10

Q. And there is no doubt whatever that in Northern Alberta they have been extracting oil and gas from tar sands by methods other than drilling? A. In the laboratory, yes. 20

Q. They are quarrying tar sands and they are seeking for a commercial method to extract are not they? A. Yes.

Q. And the laboratory work has been to further that object? And they have been taking these tar sands which have been mined and extracting oil and gas from them in the laboratory? A. From those that have been mined, they have been extracting oil and gas.

MR. SMITH: That is all.

MR. SINCLAIR: I don't know whether that was really re-examination or not, I would like to ask a question.

Re-Examination.

Q. MR. SINCLAIR: Is there any suggestion that there is anything like the tar sands underneath the lands that are in issue in this action? A. No sir. 30

Q. Do you know if there is any possibility of such a deposit there that can be utilized as the tar sands of McMurray are used?

A. No sir, I don't.

Re-Cross-
Examina-
tion.

Q. MR. SMITH: You are speaking of possibilities? A. No, not according to the drilling tests that have been made in that part of Alberta.

Q. On these lands? A. In that district.

Q. What is the nearest drilling that has been done to the Town of Raymond to any depth? A. They are drilling on Township 2. 40

Q. That is a new well that is just started? A. No.

Q. Who are they? A. The Parco.

Q. And how far have they gone? A. They have gone down into the limestone.

Q. Doctor, let me put it to you this way. We have learned that insofar as oil and gas in Alberta are concerned, the only real test is to drill? A. That is the safest.

Q. It is the only one. You and all the other Geologists for example quite frankly admit you are quite wrong as to the extent of Turner Valley? A. Yes.

10 Q. And it is really necessary so far as oil and gas to drill?
A. Insofar as—

Q. The discovery of oil and gas are concerned the drill has proved to be the only worthwhile test? A. That is the only test.

MR. SINCLAIR: That is the case for the Plaintiff.

DEFENCE

No. 7.

Extracts from Examination for Discovery of James H. Walker, The Officer of the Plaintiff Company.

20 MR. SMITH: I am putting in portions of the Examination for Discovery of the person produced by the Plaintiff Company, James H. Walker.

Examination for Discovery of James H. Walker, the officer submitted by the Plaintiff for the purposes of this Examination, taken before S. S. Dunham, Esq., Clerk of the Supreme Court of Alberta, Judicial District of Lethbridge, at the Court House, in the City of Lethbridge, this 18th day of March, A.D. 1935.

D. H. Elton, Esq., K.C.

For the Plaintiff.

J. McCaig, Esq.

For the Defendant.

S. R. Howard,

Official Court Reporter.

30 JAMES H. WALKER, having been first duly sworn, examined by Mr. McCaig, testified as follows:

1. Q. What is your full name, Mr. Walker? A. James H. Walker.
2. Q. And you are produced here as an officer on behalf of the Knight Sugar Company, Limited, for the purpose of examination and in accordance with the Order for Directions?
A. Yes, sir.

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No. 6.

Plaintiff's
Evidence.

John
Andrew
Allen,
Re-Cross-
Examina-
tion.

continued

Defendant's
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from
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tion for
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H. Walker,
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3. Q. And you have been sworn? A. Yes, sir.
8. Q. How long have you been with the Knight Sugar Company?
A. Since February, 1913.
9. Q. Since February, 1913? A. Yes.
10. Q. Since that date have you always occupied the position of ac-
countant? A. No, not for probably the first year, after that
time I was.
15. Q. Well, now, have you for the purposes of this examination en-
deavoured to acquaint yourself with all the matters raised in
question in this action? A. I have. 10
16. Q. Between the Knight Sugar Company and the Alberta Railway
and Irrigation Company? A. I have.
17. Q. Now, I wanted you to produce to me the memorandum and
articles of association. I understand from what you say that
that is in Raymond at the present time?
A. Yes, I can produce that.
18. Q. Are you acquainted with the terms of the memorandum and
articles of association? A. I have read it several times.
19. Q. You have read it several times. When was the company in-
corporated? A. I can't give you the date, but it was in the 20
year 1902.
20. Q. 1902? A. Yes.
22. Q. My information is that that memorandum and articles of as-
sociation was prepared by Conybeare and Ives?
A. That is probably right.
23. Q. At that time Conybeare and Ives were the solicitors for the
Knight Sugar Company? A. Yes.
24. Q. And do you know how long after 1902 the firm of Conybeare
and Ives or Mr. Conybeare alone continued to be solicitors for
the Knight Sugar Company? A. He was the solicitor for the 30
Knight Sugar Company after I went to work for them.
25. Q. For how many years? A. Well, it would be up to the time that
Mr. Elton was asked to take charge there. I don't know. I
couldn't give you the exact time. Probably Mr. Elton could
give you the date, but he was our solicitor up to that time.
31. Q. Now, do you know who the chief person concerned in incor-
porating the Knight Sugar Company was? A. The chief of-
ficer of the Knight Sugar Company?
32. Q. Yes? A. It would be Jesse Knight or E. P. Ellison; one of 40
the two.
33. Q. Is Mr. Jesse Knight still alive? A. No, he isn't.
34. Q. How long since he died? A. He has been dead for probably
five years.

35. Q. You, I suppose, as accountant, have seen his signature many, many times? A. I have.
36. Q. And you can identify it? A. I think so.
37. Q. Well, Mr. Ellison. Is Mr. Ellison still alive? A. He is.
38. Q. He is a director of the company at the present time?
A. No, he isn't. He was a director up until about two years ago.
39. Q. Well, has he any official position with the company now?
A. No. He still owns stock in the company.
- 10 40. Q. What was his official position up to the time that he ceased to occupy an official position? A. Well, he was the manager of the company for years.
41. Q. About how many years? A. Oh, I suppose up until about 1912 or 1911. I think probably he dropped it in 1911. I could tell that from the minutes.
42. Q. From the time in 1902 when the company was incorporated until 1911 who was the person who had the chief direction of the affairs of the Knight Sugar Company?
A. Well, it was under the direction in the beginning, I think, of Mr. Jesse Knight, after which, I think, Mr. E. P. Ellison took the management over. Mr. Ellison was the manager, I know, in 1903.
- 20 43. Q. You know Mr. Ellison was the manager in 1903?
A. Yes, in 1903 he was the manager.
44. Q. Now, as the person concerned in the management, did Mr. Knight personally acquaint himself with documents which were being executed by the Knight Sugar Company?
A. In all cases where he signed them he would do, yes.
45. Q. Wherever he signed them I can take it that he knew the contents of the documents and what the documents intended to provide for? A. He made a study of them, yes.
- 30 46. Q. Yes. And then in 1903 you said Mr. E. P. Ellison became the manager? A. He might have become the manager in 1902, but I know he was the manager in 1903.
47. Q. He might have become the manager in 1902? A. Yes.
48. Q. Were Mr. Ellison's duties the same as Mr. Knight's had been?
A. I can't say as to that.
49. Q. We will put it this way: Had Mr. Ellison anything to do with the preparation of legal documents, preparation or the okaying or the execution of documents dealing with the property of the company? A. Just a minute. I think I can answer your question better if I see this to see if he has signed it. He signs as vice-president there.
- 40 50. Q. Now, can you answer my question, Mr. Walker?
A. Just state it again, please. Read it again, Mr. Howard.

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of the
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H. Walker,
the officer
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continued

51. Q. Just read it.
BY THE REPORTER: "We will put it this way: Had Mr. Ellison anything to do with the preparation of legal documents, preparation or the okaying or the execution of documents dealing with the property of the company?"
- A. He did in 1903.
MR. McCAIG:
52. Q. Well, then, subsequent to the incorporation of the company in 1902, who were the persons who were authorized to execute documents on behalf of the Knight Sugar Company? 10
- A. Well, Jesse Knight would be the President of the company from its organization, and E. P. Ellison would be the Vice-president.
53. Q. And they would be authorized? A. Yes, they would be authorized.
54. Q. Now, how long after 1902 would that arrangement continue?
A. Well, it would continue until at least 1911 when Mr. James E. Ellison came to be the manager of the company, but the date I couldn't tell you. I could produce that if you wanted it.
55. Q. Now, I have a certified copy of a document which was executed 20
in March of 1917, and that purported to be executed on behalf of the Knight Sugar Company by its duly constituted attorney Raymond Knight. Who is Raymond Knight?
- A. Raymond Knight is the son of Jesse Knight. He is president of the company.
56. Q. Raymond Knight was the president of the company?
A. He is at the present time.
57. Q. And when did he become president of the company?
A. I couldn't tell you that without looking at the minute book.
58. Q. Could you tell me approximately? A. It would be just a few 30
years before his father left active service.
59. Q. Could you say this: Was Mr. Raymond Knight president before you became accountant of the company? A. No. I think his father was still president when I went to work there.
60. Q. Well, Mr. Raymond Knight has the duly constituted authority to execute documents? A. Yes.
61. Q. And he would naturally scan all these documents that were submitted to him for examination? A. Yes, sure.
62. Q. And he would be familiar with the contents?
A. I would say that he would be, yes. 40
MR. ELTON: You didn't tell him what documents you were referring to.
MR. McCAIG:
63. Q. The document to which I am alluding is a certified copy of a

- transfer from the Knight Sugar Company to Alexander W. H. Thompson, Harry H. Baines and William Shaw Henry, Real Estate Agents, all of High River, Alberta, Canada, and covering the southwest quarter of the northwest quarter of 33-5-20 West of the Fourth, and Mr. Raymond Knight's signature is witnessed by Fannie H. Walker; that is your wife? A. Yes.
- 10 64. Q. Now, I have here a document purporting to be a certified copy of the transfer from the Knight Sugar Company to one Edgar Kessler, covering the northwest of 13-5-20 West of the Fourth, and it purports to be executed on behalf of the Knight Sugar Company by O. Raymond Knight? A. O. Raymond Knight and Raymond Knight are the same person.
65. Q. O. Raymond Knight and Raymond Knight are the same person? A. Yes.
66. Q. And that was on the 8th of April, 1925, Mr. Raymond Knight, I think you said, is still president? A. Yes.
67. Q. And has he still that Power of Attorney to sign documents? A. Yes, he has.
- 20 68. Q. And I take it that whenever he executes these documents he has had full knowledge of what these documents contained? A. Yes.
69. Q. Now, Mr. Walker, in cases where the Knight Sugar Company issued agreements for sale or issued transfers of property which they had sold, who prepared these documents? A. I have prepared them since I became the accountant.
70. Q. In 1913? A. Well, I went to work there in 1913. It would be probably 1914 or 1915 since I prepared them.
- 30 71. Q. Prior to 1914 or 1915, whichever it was, when you became accountant, who was responsible for the preparation of agreements for sale of the company's lands or transfers of the company's lands? A. It would be either under the direction of James E. Ellison or J. W. Evans. My wife was the stenographer there at that time.
72. Q. Just let me understand this correctly. When a piece of land was going to be sold had you a printed form of agreement or a certain form? A. We did practically ever since the company began have a printed form.
73. Q. Ever since 1902? A. There were one or two exceptions, but practically every one of them.
- 40 74. Q. Was that same form of agreement for sale used from say the year 1902 up to approximately the present time? A. Well, it has been changed.
75. Q. It has been changed from time to time? A. Yes.
76. Q. Have you any printed forms of agreements with the changes

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that have been made from time to time? A. I don't know that we have anything that has not been used. We would have them, that is, under contract.

77. Q. You have agreements for sale? A. Yes, we have them.
78. Q. Who in the first instance prepared that form of agreement?
A. Mr. Conybeare.
79. Q. And that would be approximately when? A. That must have been back in 1903, probably 1902; there may have been some sales before that.
80. Q. And the form of transfer was prepared by whom? 10
A. Mr. Conybeare.
81. Q. Mr. Conybeare? A. Yes.
82. Q. And was that form of transfer altered from time to time?
A. Mr. Elton can tell you if there is any change made in the form of transfer that was made. We had to change them in order to conform with the law.
- MR. ELTON: I don't think I ever prepared any transfers.
83. Q. Changes were made, you said, from time to time?
A. Yes, in order to conform with the law.
84. Q. Changes were made in the form of transfer. Well, now, who 20 was responsible for these changes? Was it an officer of the company who gave instructions, or was it brought to the company's attention by its solicitor, or how was it done?
A. The only change in the transfer is the changes that were required by the provincial act.
85. Q. In what respect? A. In your affidavits of value and your Dower Act.
86. Q. You say those were the only changes?
A. The only changes that I know of.
123. Q. Just to divert for a moment. Did the Knight Sugar Company 30 purchase lands from any other people than the Alberta Irrigation Company? A. Not in large tracts. They might have bought a few individual parcels.
124. Q. When would these transactions be entered into?
A. Any time from 1902 up to the present time.
125. Q. Were the minerals purchased with each piece of land?
A. In some cases, yes.
126. Q. And in cases where the Knight Sugar Company purchased the minerals they got transfers of them, did they? A. Yes.
127. Q. Now, what years would that be? A. I think the last would be 40 purchased from the Hudson's Bay when we purchased the land and the mineral rights were transferred with the purchase.
128. Q. When would that be, that particular transaction?
A. Oh, it would be around prior to 1918.

129. Q. Now, whose business would it be to satisfy themselves with regard to the transactions that the company got the minerals?
 A. The two that I referred to, but I think I would be responsible at that time in checking up.
130. Q. That would be subsequent to 1913? A. Yes.
138. Q. Well, now, there was a man connected with the Knight Sugar Company during a number of years prior to 1913 of the name of J. W. Evans. Do you know him? A. Yes.
- 10 141. Q. What years was he employed by the Knight Sugar Company?
 A. He would be employed from 1903 until 1914.
142. Q. Was he accountant? A. Yes, he was accountant prior to the time that I became accountant.
144. Q. Well, now, as accountant during these years was it his business to arrange for transfers of the various lands which the Knight Sugar Company had purchased? A. He would make them up, but the manager or the president would sign them.
145. Q. That isn't what I am asking, Mr. Walker. What I am asking is, he would have power to arrange for transfers to the Knight Sugar Company? A. Yes.
- 20 146. Q. And do you know, as a matter of fact, that at various times he sent various sums to the Alberta Railway & Coal Company in payment of lands which he wished to have transferred to the Knight Sugar Company? A. I know that he sent these payments at various times, yes.
147. Q. And you know that these payments were made? A. Yes.
148. Q. And that the Alberta Railway & Coal Company delivered transfers from time to time? A. Well, I was regarding the transfers as being sort of piecemeal, or for different tracts. I couldn't say definitely without looking that up. I know there were payments made from time to time.
- 30 149. Q. Well, the Knight Sugar Company from the year 1903 had agreed to sell a great many different parcels of land?
 A. I was going to say it must have been because of the fact that they resold to other parties and they naturally would have to make arrangements to transfer the land when it was paid for, so I suppose you could say "Yes".
150. Q. So that all these transactions, the actual handling of them, were in the hands of Mr. Evans? A. Yes.
151. Q. He would have to do that? A. Yes.
- 40 152. Q. And in dealing with any of these transactions would he have to consult the officers of the company? A. Yes, naturally.
153. Q. Who would be consulted? A. James E. Ellison.
154. Q. Would he consult Mr. Jesse Knight? A. Very seldom.
155. Q. Mr. Ellison was the man who dealt with all these transactions?
 A. Yes.

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156. Q. Now, do you know anything of the reasons pertaining to the reservation of mines and minerals in transfers which were issued by the Knight Sugar Company? A. Do I know?
157. Q. Yes? A. I would say that they did that for their own protection on that. I think you will find that those reservations were in all transfers that were issued.
158. Q. And there were similarly reservations of mines and minerals made in all agreements? A. Yes.
159. Q. Do you know who was responsible for that being done? A. Mr. Conybeare. 10
160. Q. In consultation with whom? A. He drew up the transfers, and he drew up the agreements for sale.
161. Q. In consultation with what officer of your company? A. With the manager who then was in charge.
162. Q. Mr. Jesse Knight? A. Mr. Jesse Knight or Mr. E. P. Ellison.
163. Q. You have no doubt that that was fully discussed in the office of Mr. Conybeare? A. Yes, I would think so.
164. Q. Mr. Conybeare's office was in Lethbridge, wasn't it? A. Yes.
165. Q. Since you became accountant, Mr. Walker, do you know of any officers of the company consulting Mr. Conybeare with re- 20
gard to the affairs of the Knight Sugar Company?
A. Well, not since I was the accountant. We have had some transactions with him, but regarding the land transactions I don't know whether he was consulted or not.
166. Q. But, just to repeat myself, these forms of transfer were drawn by Mr. Conybeare on instructions and in consultation with the officers of the company? A. Yes. You see, after I had been there for sometime, and probably during the time of Mr. Evans, these minerals, nobody in our part of the country had thought much of them, and these reservations that were placed 30
in the transfers, for instance, coal to the crown; and minerals to the A. R. & I., were put in at the request of the Land Titles Office at Calagry.
167. Q. Have you any letters showing that request? A. I think I can find them, if they are not too old.
168. Q. Well, I would ask you to have these produced, Mr. Walker. You have in your office down in Raymond various agreements for sale covering lands which were subsequently transferred?
A. Yes.
169. Q. And there were reservations in these of all mines and minerals, 40
were there? A. Yes."

MR. SINCLAIR: My submission is that this is an attempt to introduce evidence of subsequent dealings. My authority for that is the judgment in Houlder Brothers & Company versus The Commissioner of Public Works. It is reported in 77 Law

Journal, Privy Council, page 58. There is no doubt there in the mind of Lord Atkinson that there cannot be a subsequent declaration. I apprehend what my learned friend is going to do is to show you we dealt with some portion of this land after we got the transfer. Perhaps your Lordship may deal with it in the same way as you dealt with mine.

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MR. SMITH: I am tendering these answers subject to my own objection as well as Mr. Sinclair's. My view of this case is that your Lordship cannot—and you have now in evidence a typical transfer—my view is that there is no ambiguity in that transfer which permits the Court to have any extrinsic evidence whatever in order to determine what that document means. I take that objection to two agreements, one of 1901 and one of 1903, now Exhibits "1" and "3". I took the objection at that time and your Lordship overruled me. I am now in this position that the only ground upon which your Lordship could have overruled me was that of ambiguity and having done that I am now myself tendering evidence which I think will affect it, the ambiguity which your Lordship must think is in my transfer itself.

20

THE COURT: And that applies to what?

MR. SMITH: The evidence of this nature.

THE COURT: What questions, you were down to question 157.

30

MR. SMITH: My learned friend will not object to my saying this Company in issuing numerous transfers reserved in these transfers, and it appeared in subsequent titles, the coal to His Majesty and all other minerals to the Alberta Railway and Irrigation Company. I want to say that they themselves made a reservation to us of these minerals. That is what I seek to prove.

THE COURT: This discussion is perhaps unnecessary because I would adopt Mr. Sinclair's suggestion, that these questions, that they be admitted subject to objection and I will later make up my own mind as to whether I should regard the evidence or not.

MR. SINCLAIR: I was only keeping it open. I will have to adduce some evidence.

40

THE COURT: The only safe way to deal with the matter is to admit the evidence subject to objection.

Court here adjourned and was resumed at 2 p.m.

MR. SMITH: I was reading from question 156 of Mr. Walker's Examination for Discovery. I now put in question 172, and before reading that I may tell you I was simply having the

Memorandum of Association of this Company marked. It may be that my learned friend will not object.

MR. SINCLAIR: Put it in.

MR. SMITH: I am tendering it as Exhibit No. 8.

Document Marked Exhibit No. "8".

- "172. Q. I am showing you a document, which will be marked Exhibit Six, which you state is a copy of the memorandum of association? A. Yes."
- I now put in questions 188 to 206.
- "188. Q. Yes. Well, this ledger account shows that there were various payments made during years from at least 1907 up to the 20th of September, 1912? A. Yes. 10
189. Q. And the account shows that on the 20th of September, 1912, you paid the balance which was due to the railway company? A. Yes.
190. Q. That is, the Alberta Railway & Irrigation Company, or the Alberta Railway & Coal Company? A. Yes.
191. Q. And according to your accounts there were no further moneys due under that agreement? A. No.
192. Q. And can I take it as correct that there were no further moneys paid in respect of that agreement after the 20th of September, 1912? A. Well, I don't know whether there was. You see, we have a lot of agreements with the A. R. & I. which would probably be covered by a portion of that. If that deals with the two hundred and twenty-six thousand acres only then I think it was all cleared up here. 20
193. Q. That is the agreement I am referring to, Mr. Walker? A. I think that is right.
194. Q. That is correct. It was all closed up as far as the payments are concerned in 1912? A. I think so, yes. 30
195. Q. Now, have you got any records showing the various transfers you received from the Alberta Railway & Irrigation Company between 1902 and 1912 or 1913? A. I don't know how I would find that unless you went back and followed each transaction. That would be the only way I could follow that at all.
196. Q. Can you tell me when you received from the Alberta Irrigation Company the last transfer pursuant to that agreement in 1903? A. I can't tell you that, I suppose the quickest way to find that would be to go to the Land Titles Office where it is registered. 40 We have had a lot of old papers that are all boxed up, and it might take me weeks to go through and check that.

197. Q. Well, Mr. Walker, I am showing you a letter dated the 20th of September, 1912, purporting to be written on behalf of the Knight Sugar Company, Limited to the Canadian Pacific Railway Company at Calgary, per J. W. Evans? A. Yes.
198. Q. Do you know Mr. Evans' signature? A. I do.
199. Q. And that is Mr. Evans' signature? A. Yes.
200. Q. We will mark this as Exhibit Eight.
(Document in question marked Exhibit Eight).
- 10 Now, I would like to have you read that letter and advise me whether that shows that on that date, the 20th of September, 1912, you had completed payment in full? A. Yes.
201. Q. That letter shows that you had paid in full on that date, the 20th of September, 1912? A. Yes.
202. Q. Now, Mr. Walker, has the Knight Sugar Company ever had in its possession any certificates of title for any mines and minerals in the lands which were covered by that agreement?
A. We have for all the land that was covered by parcel No. 1.
203. Q. No, just a minute. I am not speaking about Parcel No. 1. I am speaking of Parcel No. 2 which is covered by the agreement Exhibit Four? A. We never received anything to my knowledge, anything covering any minerals from that agreement.
- 20 204. Q. Do you know, as a matter of fact, in the various parcels or transfers, rather, which the Alberta Railway & Coal Company or the Alberta Railway and Irrigation Company issued to the Knight Sugar Company, Limited, covering the various lands included in Exhibit Four, The Alberta Railway & Coal Company or the Alberta Railway & Irrigation Company did in effect except the mines and minerals? A. They must have excepted the mines and minerals because it was registered that way at the Land Titles Office.
- 30 205. Q. And did the Knight Sugar Company ever make any demand on the Registrar of the South Alberta Land Registration District at Calgary to issue any certificates of title for any mineral rights on any of these lands which are covered by Exhibit Four? A. Not until we found out that we were entitled to mineral rights.
- 40 206. Q. When do you say that you found out you were entitled to mineral rights? A. I don't know whether I can find that letter immediately or not. I just will have a look for it. February 13th, 1930.
210. Q. When did you know first that the Railway Company hadn't transferred the mines and minerals to the Knight Sugar Com-

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- pany? A. I first found it out when making transfers of land that had been paid for.
211. Q. When would that be, Mr. Walker? A. Well, that would be during the transactions that I was the accountant.
212. Q. Would I be safe in saying that would be commencing the year 1914? A. Yes, 1914. Better say 1915.
213. Q. From at least 1914 or 1915 onwards you knew that the railway company hadn't transferred any mines and minerals? A. Yes.
214. Q. To the Knight Sugar Company under the lands included in that agreement Exhibit Four? A. I did, yes. I knew that in draw- 10
ing these transfers. I knew that the Knight Sugar Company didn't own these mineral rights according to the way that the deeds were held at the Land Titles Office, and until February 13th, 1930, I didn't know that the Knight Sugar Company had bought and paid for the mineral rights until I referred to this old agreement, and I saw there
215. Q. . . . What old agreement are you referring to?
A. The original agreement.
216. Q. Of 1901? A. Yes.
217. Q. Which, I think, was Exhibit One? A. Yes. And when I saw 20
that we had bought the land without any reservations as to minerals, I figured that we were entitled to them, and for that reason I called Mr. Allen's attention to that.
218. Q. Now, Mr. J. W. Evans had been your predecessor as accountant? A. Yes.
219. Q. And he had been the accountant with the company from at least the year 1903? A. Well, he was field-man. I don't know what time he came into the office. He was field-man in 1903. Morris Ellison was the first accountant of the company.
220. Q. I am showing you a letter dated the 3rd of December, 1907, 30
purporting to be signed by J. W. Evans? A. Yes.
221. Q. So that you are prepared to say that at least in the year 1907 and from then on until you became accountant Mr. Evans was employed by the Knight Sugar Company? A. Yes.
222. Q. And Mr. Evans as accountant, it was his business amongst other things to make payments to the Railway Company called for by the agreements? A. Yes.
223. Q. And receive the transfers? A. Yes.
224. Q. And register them? A. Yes.
225. Q. And get the certificates of title from the Registrar? A. Yes. 40
226. Q. And in the case of lands sold by the Knight Sugar Company, when a piece of land was sold, and when Mr. Evans was accountant, was it his business to receive the money and arrange for the preparation of the agreement for sale? A. Yes.

227. Q. And receive the money under the agreement? A. Yes.
228. Q. And arrange for the transfer of the land when it was paid in full? A. He arranged for it, but they were always checked and signed by the manager or the president.
229. Q. The transfers were? A. Yes. Mr. Evans didn't sign the transfers.
230. Q. No. He had no authority to sign? A. No."
- 10 That agreement Exhibit No. 4, in the Examination for Discovery at question 214 is now in as Exhibit No. 3.
- Now if your Lordship pleases, the discovery, from then on, it is something we can agree on I think, what is in a very large series of letters from the two companies—I mean the enclosure of the cheque and request for a transfer and then the acknowledgment of the transfer and there is no such suggestion in any of these letters of any complaint about any form of transfer.
- MR. SINCLAIR: No, we have never complained about these transfers at any time.
- MR. SMITH: Until February 1930.
- 20 MR. SINCLAIR: We are not even complaining yet of the transfers.
- THE COURT: What is the admission, it is possible that a certain class of admission might be conclusive of this action.
- MR. SMITH: Perhaps I should put in 1907 and one in 1917 and the admission is that these are typical of a great many letters which were written.
- MR. SINCLAIR: I assume I admit that, you put it in. You pick out what you are going to put in.
- MR. SMITH: Question No. 236.
- 30 "236. Q. Just a minute; there is the description of the land, amongst others, are sections four, five and six and seven, in township four, twenty. Now, I have asked you to produce and I am going to have marked as Exhibit Nine an agreement for sale dated the 1st of April, 1904, by which the Knight Sugar Company agreed to sell to W. J. Hart the southwest of 12-6-20?
- A. Yes."
- I am tendering as Exhibit No. 9 a document, agreement for sale.
- MR. SINCLAIR: That is subject to the same objection my Lord.
- 40 THE COURT: It is one that seems to cut both ways.
- Document Marked Exhibit No. "9".**
- MR. SINCLAIR: I am not quite sure but I think that prob-

*In the
Supreme
Court of
Alberta*

Defendant's
Evidence.

No. 7.

Extracts
from
Examina-
tion for
Discovery
of James
H. Walker,
the officer
of the
Plaintiff
Company.

*In the
Supreme
Court of
Alberta.*

Defendant's
Evidence.

No. 7.

Extracts
from
Examina-
tion for
Discovery
of James
H. Walker,
the officer
of the
Plaintiff
Company

continued

ably the original transfer will show there was an alteration made in that, there were some which were altered at the request of the Land Titles Office. I think it is of importance to know.

MR. SMITH: I am showing a certified copy of the transfer.

THE COURT: It is going in by consent.

MR. SINCLAIR: Yes.

Document Marked Exhibit No. "10".

MR. SMITH: My learned friend points out that it may be in the original of the transfer there may have been a change. I 10 should have read question 237.

(Reads).

"237. Q. And I am showing you copy of a transfer covering the same land which I am going to have marked as Exhibit Ten, and I am calling to your attention that in the description of the land reservation is made unto His Majesty of all coal, and unto the A. R. & I. of all other minerals. Now, do you see that?

A. Yes.

(Document in question marked Exhibit Ten)."

MR. SMITH: I now read question 238. And I want to mark 20 another transfer of lands, a transfer dated the 18th of April 1925.

MR. SINCLAIR: The same thing applies to that my Lord, that there was a change made. There is a letter from the Registrar about that.

MR. SMITH: I would be very glad to have it put in.

Transfer Marked Exhibit No. "11".

Letter of January 28th, 1925, Marked Exhibit No. "12".

THE COURT: Having dealt with that suggestion whether rightly or wrongly made by the Registrar, where does that 30 lead you?

MR. SINCLAIR: Nowhere. I would have to put it in anyway.

MR. SMITH: I am quite content to have it go.

"238. Q. Now, I am asking you to produce, and I will have marked as Exhibit Eleven, an agreement for sale from the Knight Sugar Company to Edward Kessler of Raymond, Alberta, farmer, covering the northwest of 13-5-20 West of the 4th. That is being produced by you.

(Document in question marked Exhibit Eleven).

And I am asking you to produce and I am having marked as 40 Exhibit Twelve, the transfer which was issued on the 8th of

April, 1925, from the Knight Sugar Company, Limited, covering the northwest of 13-5-20 West 4th, and I am directing to your attention that there is in the description the following reservation, namely, reserving unto His Majesty all coal and unto the Alberta Irrigation Company all other minerals. The execution of that transfer is witnessed by F. H. Walker; that is your wife? A. Yes.

(Document in question marked Exhibit Twelve)."

10 MR. SMITH: The next one I am putting in in pursuance of question 239 is a transfer.

THE COURT: You are putting in only the transfer which was Exhibit "12" on the discovery.

MR. SMITH: Yes, my Lord, on discovery. My learned friend has agreed with me that we may put in all these Land Title records in this way, I don't think we need bother about the questions and answers at this point.

MR. SINCLAIR: But I think my Lord, the agreement which was the origin of the transfer should go in along with the transfer.

20 MR. SMITH: It is subject to my original objection which applies here. I take it your Lordship will make the same ruling. I am not going to put it in as part of my case.

MR. SINCLAIR: That is all right.

MR. SMITH: The next transfer I intend putting in is a transfer of the Knight Sugar Company dated the 4th of November 1916.

30 THE COURT: Do I understand that this transfer with all the transfers of which this is typical were taken whether in substitution for something previously prepared or not and that the Plaintiff company was instrumental in the registration of the transfer, including the reservations you have read, to the Crown and to the Defendant Company.

MR. SMITH: I think my learned friend will agree that is a correct statement.

MR. SINCLAIR: They granted the transfers and as to whether they actually registered them as agent for the transferee I don't know and the description was put in to suit the requirements of the Land Titles Office.

40 MR. SMITH: We have the evidence of Mr. Walker on that which I have read you with respect to this reservation, beginning at question 156.

THE COURT: The question I interjected was based upon some idea of this kind that if this Plaintiff company were instrumental in the registration of the transfer containing a re-

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No. 7.

Extracts
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the officer
of the
Plaintiff
Company.

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Evidence.

No. 7.

Extracts
from
Examina-
tion for
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of James
H. Walker,
the officer
of the
Plaintiff
Company

continued

servation to the Defendant Company some of the difficulties that have been canvassed might disappear.

MR. SMITH: This is the last one I tendered.

Document Marked Exhibit No. "13".

The next transfer which I tender is dated the 1st of March 1917.

Document Marked Exhibit No. "14".

The next one which I tender is dated the 28th of April 1916, the Knight Sugar Company to The Standard Trust Company and containing a very large acreage, about a thousand acres. 10

Document Marked Exhibit No. "15".

The next one is between the Plaintiff Company and Ray Powell, dated 28th of February, 1917.

Document Marked Exhibit No. "16".

The next one is dated the 8th of June 1909.

Document Marked Exhibit No. "17".

I now turn in the Examination for Discovery to questions 249 to 266.

- "249. Q. These returns would be made up by you?
A. Since about that time, yes. 20
250. Q. Now, during these years, since you have been accountant, that was since 1914, have you knowledge of any returns made to the Registrar which showed the mines and minerals in the lands covered by that agreement Exhibit Four as belonging to the Knight Sugar Company? A. No, sir.
251. Q. But you never showed any of the mineral rights under any of these lands as being an asset of the Knight Sugar Company?
A. Not on this one parcel.
252. Q. You mean this two hundred and twenty-six thousand acres?
A. Yes. 30
253. Q. And I noticed in the returns also that there were some coal lands returned as worth seventeen hundred and forty dollars. Has that anything to do with the lands? A. That would be the coal lands referred to, and would be parcels of land that we had purchased, that is, the coal rights.
254. Q. Nothing to do with these lands?
A. Nothing to do with this contract.
255. Q. Then in July of 1933 there was a trust deed securing the issue of debentures which trust deed was executed in favour of The Royal Trust Company? A. 1932. 40
256. Q. July of 1932? A. You said 1933.

257. Q. Yes, I beg your pardon. And there were a large number of lands belonging to the Knight Sugar Company described in that trust deed? A. Yes.
258. Q. And you are also aware that quite a few of the parcels of land described in that trust deed contained an exception of mines and minerals? A. Yes.
259. Q. Including gas and petroleum? A. Yes.
260. Q. You know that? A. Yes.
- 10 261. Q. And others of these lands were described as reserving to His Majesty all coal and to the Alberta Railway & Irrigation Company all other minerals? A. Yes.
262. Q. You know that? A. Yes.
263. Q. That trust deed securing these debentures, was that personally checked up by you? A. Yes.
264. Q. And all gone over with you to see that is was in order?
A. Yes.
265. Q. Do you know who were the Royal Trust Company's solicitors? A. Yes, I think so.
266. Q. And was it gone over by them? A. I think so."
- 20 287. Q. Now, Mr. Walker, will you just look at this a minute, I am showing you a document dated the 29th of July, 1930, purporting to be signed by David H. Elton, addressed to the Alberta Railway & Irrigation Company, the successors of the Alberta Railway & Coal Company, and the Canadian Northwest Irrigation Company, and to the Canadian Pacific Railway, lessees of the Alberta Railway & Irrigation Company. Do you admit that was signed by you, and that that was prepared on the instructions of the Knight Sugar Company?
MR. ELTON: Yes."
- 30 MR. SMITH: I am tendering the document dated July 29th 1930.
Document Marked Exhibit No. "18".
I now read questions 294 and 295.
- "294. Q. Now, I think I asked you this before, but just in case I omitted, Is there any doubt in your mind, Mr. Walker, that between the years 1903 when Exhibit Four was entered into, and 1912, when the last payment was made, that there were a very large number of transfers issued by the Alberta Railway & Irrigation Company? A. Yes, there were.
- 40 295. Q. And do you know, as a matter of fact, that these various payments which were made from time to time by the Knight Sugar Company were made by Mr. Evans? A. It would be either made by Mr. Evans, Mr. Morris Ellison or Mr. James

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—
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—
Extracts
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tion for
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of the
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No. 7.

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Extracts
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tion for
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of James
H. Walker,
the officer
of the
Plaintiff
Company

continued

E. Ellison, any one of the three of them. Probably E.P. might have made some of them."

"303. Q. And you aren't prepared to say how long that agreement Exhibit Four, which is dated in November, 1903, was in possession of your company? A. Well, this agreement would be in possession until that final payment was made when the A. R. & I. would call for it."

MR. SMITH: That is all the discovery except I am going to put in a few typical letters dealing with parcels of land. I am putting in typical letters running from 1907, 1909 and then 10 jumping to 1913 which are requests for and acknowledgments of transfers of land and my learned friend agrees with me these are typical of the correspondence during the period.

MR. SINCLAIR: Yes, my Lord.

Documents Marked Exhibit No. "19".

MR. SMITH: My Lord, in connection with that, to give you some idea of the extent of it, I will read question No. 315 of the discovery.

"315. Q. We have marked all these letters as exhibits, Exhibits Twenty-four to One hundred and forty-six. These letters Exhibits 20 Twenty-four to One hundred and forty-six, both inclusive, you admit that these were written on behalf of the Knight Sugar Company? A. Yes."

I am merely putting that question in to show the extent.

THE COURT: You are putting in question No. 315.

MR. SMITH: I am only putting in Exhibit 19 as a portion of that huge exhibit.

MR. SMITH: That is the Defence.

REBUTTAL

Plaintiff's
Evidence
in Rebuttal.

MR. SINCLAIR: I wonder if I can get another admission from my 30 learned friend, during the period Mr. Conybeare was mentioned he was solicitor for the Alberta Railway & Irrigation Company.

MR. SMITH: I don't know that he was, I am sure I don't know.

No. 8.

Evidence of Wilford Forbes.

*In the
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WILFORD FORBES, sworn, examined by Mr. Sinclair:

Q. I believe you are the Registrar under The Land Titles Act, for the South Alberta Land Registration District? A. Yes.

Q. I show you three letters here addressed to the Knight Sugar Company Limited, and also Exhibit 12. Were these letters sent out
10 from your office? A. Yes.

Q. You will observe that they give some directions as to the form of reservation? A. Yes.

Q. Why did you send these letters? A. Well I presume that was the correct reservation. Possibly that is the only reason I had.

Q. The transfer would come in for registration as referred to there? A. Yes.

Q. And in the course of carrying out the duties of your office the transfer when compared with the title which would have to be cancelled if the transfer goes through? A. Yes.

20 Q. Would you prefer to say then that that letter was written to have the description in the transfer conform to that in the existing title?

A. Yes, the reservation you mean.

Q. Yes, and that is your interpretation of what the language of the reservation should be? A. Yes, that is my interpretation.

MR. SINCLAIR: I put these documents in as one exhibit.

**Three Letters Dated 27th of December 1916 15th of March 1917
and 20th of March 1917. Marked Exhibit No. "20".**

Q. The letter of 27th December 1916 and is addressed to the Plaintiff and the 15th of March 1917 is addressed to the transferee Hancock?

30 THE COURT: A transfer from the Plaintiff?

MR. SINCLAIR: Yes. And March 20th 1917 is addressed to Bal-lachey & Burnet, High River, who had sent the transfer to the Registrar

THE COURT: I understand Mr. Forbes to say that these letters and Exhibit No. 12 show the Registrar's interpretation of the reservation in the title which was being dealt with by these transfers.

MR. SINCLAIR: Yes.

Q. MR. SINCLAIR: And you insisted upon the transfer being worded in that way and secured registration? A. I don't know that I insisted but I tried to get them that is all,—according to my lights.

40 MR. SMITH: No questions.

MR. SINCLAIR: That is all my Lord.
Which closed the case.

Plaintiff's
Evidence
in Rebuttal.

No. 8.

Wilford
Forbes
Direct Ex-
amination.

PART II.
EXHIBITS AND DOCUMENTS.

Exhibits
and
Documents.

No. 1.

No. 1.
Agreement
between
The Alberta
Railway
and Coal
Company,
The
Canadian
North West
Irrigation
Company
and Jesse
Knight for
the erection
of a Sugar
Factory.

Agreement between The Alberta Railway and Coal Company, The Canadian North West Irrigation Company and Jesse Knight for the erection of a Sugar Factory.
(Plaintiff's Document).

MEMORANDUM OF AGREEMENT made this 19th day of July A.D. 1901.

BETWEEN

10

THE ALBERTA RAILWAY AND COAL COMPANY,
(hereinafter called "The Railway Company"),
of the **FIRST PART.**

THE CANADIAN NORTH WEST IRRIGATION COMPANY,
(hereinafter called "THE Irrigation Company"),
of the **SECOND PART.**

AND

JESSE KNIGHT of Provo, in the State of Utah, one of
the United States of America, Mining Operator,
(hereinafter called "The Contractor"),
of the **THIRD PART.**

20

WHEREAS the Irrigation Company are now entitled to certain lands situate West of the Fourth Meridian, in the District of Alberta, which are included in the area shown on a plan hereto attached as Parcel No. 1, which said parcel contains by admeasurement 57,000 acres, more or less.

AND WHEREAS the Railway Company are the owners of certain other lands West of the Fourth Meridian aforesaid which are included in the area shown on the plan above mentioned as Parcel No. 2, which said parcel contains by admeasurement 226,000 acres, more or less.

30

AND WHEREAS it has been agreed between the parties hereto that the Contractor shall erect a sugar factory upon said Parcel No. 1 and do certain other things hereinafter required of him in consideration of the various covenants on the part of the other parties hereto hereinafter contained.

NOW THEREFORE THESE PRESENTS WITNESS that the Contractor for himself, his heirs, executors, administrators, or assigns, covenants to and with the other parties hereto, their and each of their respective successors or assigns as follows:—

(1) That he the Contractor will erect at some point located in the said Parcel No. 1 on a site to be approved by the Irrigation Company, a factory for the manufacture of beet sugar and other saccharine products and will equip the same with all necessary machinery and appliances required for such purpose and will have the same completed and ready for operation by the First day of September A.D. 1903.

(2) That he the Contractor will expend in and about the erection and equipment of said factory a sum of not less than \$300,000 and will on or before the said First day of September 1903 furnish to the other parties hereto vouchers showing that at least the sum of \$300,000 has been expended by him for such purposes.

(3) That he will before the 31st day of December 1901 break and plough three thousand acres of land within the said Parcel No. 1.

(4) That as a guarantee for the due performance of the covenants on his part above recited and in consideration of the covenants affecting lands in the said parcels numbered One and Two on the part of the Railway Company and the Irrigation Company hereinafter contained he the Contractor will pay to the other parties hereto the sum of \$50,000 at or before the time of the sealing and delivery of these presents which in the event of his making default in the performance of any of the covenants aforesaid shall be absolutely forfeited and shall be divided equally by the other parties hereto free from any claim thereto on the part of the Contractor.

And the Irrigation Company for itself its successors and assigns hereby covenants to and with the Contractor his heirs, executors, administrators or assigns, as follows, that is to say

(5) That as soon as the location of the proposed sugar factory shall have been determined it will lease and demise to the Contractor the whole of the section of land containing 640 acres more or less upon which the said sugar factory is to be erected to be held by him as tenant until the said First day of September 1903 for the rental of \$1.00 and if upon the said last mentioned date the Contractor shall furnish satisfactory evidence that he has erected such sugar factory and expended thereon the said sum of \$300,000 it will convey the said section to the Contractor free and clear of all encumbrances in consideration of the sum of \$1.00 and will enter into an agreement for the supply to the Contractor in perpetuity and free of charge of an amount of water equal to five cubic feet per second for five months to be delivered into a reservoir and to be used for sugar factory purposes between the First day of September in each year and the First day of February next ensuing, such reservoir to consist of an earth dam to be constructed by the Irrigation Company in a solid and substantial manner under the supervision of the Contractor across the natural channel of Middle Coulee but to be maintained and kept in repair by the Contractor, the construction of such dam to be commenced when the machinery for the factory is on the ground.

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Alberta*

Exhibits
and
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—
No. 1.
Agreement
between
The Alberta
Railway
and Coal
Company,
The
Canadian
North West
Irrigation
Company
and Jesse
Knight for
the erection
of a Sugar
Factory.

continued

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 1.

Agreement
between
The Alberta
Railway
and Coal
Company,
The
Canadian
North West
Irrigation
Company
and Jesse
Knight for
the erection
of a Sugar
Factory.

continued

(6) That as soon as the 3,000 acres above mentioned shall have been broken and ploughed by the Contractor it will lease or demise the lands covered by such ploughing to the Contractor to be held by him as tenant until the 1st day of September 1903 for the rental of \$1.00.

(7) The Irrigation Company further agrees that from and after the execution of these presents and until the First day of July 1902 it will hold all other lands now owned by it in Parcel No. 1, aggregating about 52,000 acres more or less excluding therefrom reservoir sites and right-of-way required for railway or canal purposes for sale at the following prices, namely, for lands lying below the level of the Irrigation Company's present canal system the minimum price shall be \$10.00 per acre and for lands lying above the level of such system and which cannot receive water therefrom, the minimum price shall be \$6.00 per acre and such price shall be annually revised and the selling prices for the ensuing year determined by duly accredited representatives of the Irrigation Company and the Contractor on the First day of November in each year thereafter the first of such annual revisions to be made on the First day of November 1902 but if the Irrigation Company and the Contractor shall be unable in any year to agree on the price to be so fixed then the Contractor shall fix the price at which the odd numbered sections shall be held for sale and the Irrigation Company the prices at which the even numbered sections are to be so held and if at the expiration of five years from the date upon which such disagreement shall have occurred any of such odd numbered sections shall remain unsold, the Irrigation Company shall thereafter fix the selling price of all lands whether odd or even numbered sections still remaining in their hands, but in no case shall the prices fixed either by the Contractor or the Irrigation Company be less than those provided to take effect on the execution hereof.

(8) And the Irrigation Company further covenants that on the First day of September 1903 if the Contractor shall have complied with the requirements of paragraphs 1, 2 and 3 hereof it will pay to the Contractor an amount equal to two-thirds of all moneys which it shall receive on account of purchase moneys for lands in parcel One in excess of the sum of \$5.00 per acre, thereafter will from time to time place to his credit two-thirds of the purchase money in excess of \$5.00 per acre received for such lands, and in the event of a sale to any other person of any land comprised in the 3,000 acres broken and ploughed as aforesaid it will pay to the Contractor an amount equal to \$3.50 per acre on account of ploughing and a further amount computed at the rate of \$100. per mile for any fencing then upon the land so sold.

(9) That in the event of the Contractor faithfully observing the covenants on his part herein contained it will on the First day of September 1903 pay to the Railway Company on account of the Contractor the sum of \$25,000 being the portion of the deposit mentioned in paragraph 4 hereof received by the Irrigation Company.

And the Railway Company for itself its successors and assigns hereby covenants to and with the Contractor.

- (10) That in consideration of the covenants on the part of the Contractor above contained and the sum of \$25,000 to be paid to it as aforesaid by the Contractor being the share to be received by it of the deposit mentioned in paragraph 4 hereof it will lease and demise to the Contractor all lands now owned by it or to which it is entitled in the said Parcel No. 2 aggregating 226,000 acres more or less to be held by the Contractor as tenant until the First day of September 1903 and if on said First day of
- 10 September 1903 the Contractor shall produce satisfactory evidence that he has complied with the requirements of paragraphs 1, 2 and 3 it will if the Contractor shall then so desire enter into an agreement with him for the sale to him of the whole of their said lands in said parcel two at and for the price of \$2.00 per acre payable in ten annual instalments of 20 cents per acre each with interest at the rate of 6 per centum per annum on the purchase money from time to time remaining unpaid. The first of such payments to be made upon the said First day of September 1903 and the Contractor shall have the privilege on said date of deciding to purchase only one half of said parcel in which case he shall receive an
- 20 agreement for the sale to him for the price of \$2.25 per acre but otherwise on the same terms of all lands owned by the Railway Company lying either on the east or to the west of a line drawn from North to South bisecting said parcel and in either case the Contractor shall be credited on account of such purchase with the sum of \$50,000 being the deposit made by him under paragraph 4 hereof.

- (11) That the Railway Company will construct any spur or switch that may be required to connect the factory with the railway or that the Contractor may in writing request to be constructed as being required in or about the working of the factory at the time when it commences to operate, but in such case the right-of way or yardage room occupied by such spur or switch shall be the property of the Railway Company and may be deducted from and reserved by them out of any lands through or upon which such spur or switch is located which they may be required on
- 30 account of the Irrigation Company to convey to the Contractor.

- IN WITNESS WHEREOF the Canadian North West Irrigation Company hath caused Elliott T. Galt, its President and duly constituted Attorney to set his hand and seal hereto for it and on its behalf and The Alberta Railway and Coal Company hath also caused Elliott Torrance Galt, who is also its President and duly constituted Attorney to set his
- 40 hand and seal hereto for it and on its behalf and the said Jesse Knight hath also set his hand and seal hereto the day and year first above mentioned.

SIGNED, SEALED AND DELIVERED

in the presence of

(Sgd) C. F. P. Conybeare.

The Canadian North West Irrigation Co. per (Sgn) E. T. Galt.

The Alberta Railway and Coal Co. per (Sgn) E. T. Galt.

(Sgn) Jesse Knight.

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 1.
Agreement
between
The Alberta
Railway
and Coal
Company,
The
Canadian
North West
Irrigation
Company
and Jesse
Knight for
the erection
of a Sugar
Factory.

continued

**Assignment of Agreement, Document No. 1 to Knight Sugar Company.
(Plaintiff's Document).**

Exhibits
and
Documents.

No. 2.

Assignment
of
Agreement,
Document
No. 1 to
Knight
Sugar
Company.

THIS INDENTURE made in quintette this 7th day of April A.D. 1903, between JESSE KNIGHT and AMANDA MELVINA KNIGHT, his wife, of Provo, Utah, one of the United States of America, of the first part, and KNIGHT SUGAR COMPANY, Limited, of the second part, and the ALBERTA RAILWAY AND COAL COMPANY, of the third part, and the CANADIAN NORTHWESTERN IRRIGATION COMPANY, of the fourth part, and JOHN W. TAYLOR, of Salt Lake City, Utah, one of the United States of America, of the fifth part, WITNESSETH: 10

THAT WHEREAS, on the 19th day of July, 1901, the said Jesse Knight and the said third and fourth parties hereto entered into an agreement, a copy of which is hereto attached, marked "Exhibit A", and made a part hereof;

AND WHEREAS, the said first party herein on the 7th day of April A.D. 1903, executed and delivered to one John W. Taylor, of Salt Lake City, Utah, an agreement, a copy of which is hereto attached, marked "Exhibit B", and made a part hereof; 20

AND WHEREAS, the said party of the first part herein is desirous of assigning to the said second party herein all his right, title, and interest in said agreement hereto attached, marked "Exhibit A", subject to all the conditions and obligations thereof, and also subject to the said conditions and obligations of the said agreement marked "Exhibit B";

AND WHEREAS, said second party herein has agreed, in consideration of such assignment being accepted by the said parties of the third, fourth and fifth parts, to give its personal covenants to the parties of the third, fourth and fifth parts to carry out and fulfil all the covenants, conditions and obligations in the said agreements marked "Exhibit A." 30 and "Exhibit B." hereto attached, by the party of the first part herein agreed to be done, paid, or performed; and the said party of the first part, in consideration of the parties of the third, fourth and fifth parts accepting said assignment, has agreed that this assignment or the acceptance thereof by the parties of the third, fourth and fifth parts, shall not in any way affect the rights of the parties of the third, fourth and fifth parts to enforce the covenants, agreements and obligations of the party of the first part in said agreements, marked "Exhibit A." and "Exhibit B.", contained against him, his heirs or representatives;

NOW THIS INDENTURE WITNESSETH: that in consideration 40 of the premises and of the sum of one dollar now paid by the said party of the second part to the party of the first part, receipt of which is hereby acknowledged, the party of the first part hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth grant,

bargain, sell, assign, transfer, and set over unto the party of the second part, its successors and assigns, all of the estate, right, title, claim, and demand whatsoever, both in law and in equity, of the parties of the first part, of, in and to those certain parcels or tracts of land or premises, situated, lying and being in the District of South Alberta, in the North-western Territories of the Dominion of Canada, which are included in the area shown on a plan attached to said "Exhibit A." as parcel No. 1 and parcel No. 2; together with all the privileges and appurtenances thereto belonging, subject to the payment of the balance due and accruing due

10 under the hereinbefore mentioned agreement, marked "Exhibit A." hereto attached, also subject to the said agreement hereto attached, marked "Exhibit B." and all the conditions and obligations thereof;

Together with all interest of the party of the first part in said agreement so far as the same relates to the above described lands; to have and to hold the same with all and every benefit that may or can be derived from the said described land, unto the party of the second part, its successors and assigns, forever.

The party of the second part, in consideration of the parties of the third, fourth and fifth parts accepting this assignment, which acceptance may be without formal execution hereof by them, hereby covenants and agrees to and with said parties of the third, fourth and fifth parts, their successors and assigns, to pay the several sums of the purchase money and interest in the said agreements hereto attached, marked "Exhibit A." and "Exhibit B." contained, on the date and time when the same shall become due; and to do and perform all such other acts and things, which said party of the first part herein, in the said agreements, marked "Exhibit A." and "Exhibit B." hereto attached, covenanted with the parties of the third, fourth and fifth parts herein to do.

20

And the said Jesse Knight, for the consideration aforesaid, hereby covenants that the execution of this agreement or the acceptance hereof by the parties of the third, fourth and fifth parts shall not in any way release him from his obligations to perform all covenants, conditions and obligations contained in said "Exhibit A." and "Exhibit B." and agreed by him to be done and performed.

30

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals and The Knight Sugar Company Limited, by Ephraim P. Ellison, its Vice President and duly constituted Attorney, to set his hand and seal hereto for it and on its behalf the day and year first above written.

40 SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF
"Frank Y. Taylor".

"Jesse Knight"
"Amanda Melvina Knight"
Knight Sugar Co. Ltd.
by "Ephraim P. Ellison"
Vice Pres. (SEAL.)

*In the
Supreme
Court of
Alberta*
—
Exhibits
and
Documents.
—
No. 2.
—
Assignment
of
Agreement,
Document
No. 1 to
Knight
Sugar
Company.
continued

No. 3.

**Agreement between The Alberta Railway and Coal Company and The
Knight Sugar Company Limited re Purchase of Lands.
(Plaintiff's Document).**

*In the
Supreme
Court of
Alberta*
—
Exhibits
and
Documents.

No. 3.
—

Agreement
between
The Alberta
Railway
and Coal
Company,
and The
Knight
Sugar
Company
Limited
re Purchase
of Lands.

ARTICLES OF AGREEMENT made in duplicate this Twenty-fifth day of November, A.D. 1903.

BETWEEN:

THE ALBERTA RAILWAY AND COAL COMPANY
(hereinafter called the "Company")

OF THE FIRST PART, 10

—and—

KNIGHT SUGAR COMPANY, LIMITED
(hereinafter called the "Purchaser")

OF THE SECOND PART.

WHEREAS the said Company hath agreed to sell to the said Purchaser, and the said Purchaser hath agreed to purchase of and from the said Company, the lands, hereditaments and premises hereinafter mentioned, that is to say, ALL AND SINGULAR those certain parcels or tracts of land west of the Fourth Meridian in the District of Alberta, and being composed of: 20
(Here follows lengthy description of lands comprising 223,124.89 acres more or less, omitted by agreement).

The lands "Firstly" to "Thirty-secondly", both inclusive, above described, containing together 223,124.89 acres of land, more or less; together with all privileges or appurtenances thereto belonging or in any wise appertaining; at or for the price or sum of FOUR HUNDRED AND FORTY-SIX THOUSAND TWO HUNDRED AND FORTY-NINE DOLLARS AND SEVENTY-EIGHT CENTS (\$446,249.78) of lawful money of Canada payable in Ten (10) consecutive instalments at the office of the Land Department of the Company at Lethbridge, in said 30 District in manner and on the days and times hereinafter mentioned, that is to say, FIFTY-THREE THOUSAND AND EIGHTY-TWO DOLLARS AND EIGHTY-FOUR CENTS (\$53,082.84) in cash on the day of the date hereof, and the balance in Nine (9) equal consecutive annual instalments on the First day of September in each year, with interest on the whole amount of purchase money remaining unpaid, payable with each of the said instalments of purchase money, the first of such Nine (9) instalments to be payable on the First day of September, 1904, and until the whole is fully paid, at the rate of Six per centum per annum, to be computed from the First day of September, 1903; 40

NOW IT IS HEREBY AGREED between the Parties aforesaid, in the manner following, that is to say:

The said purchaser for itself, its successors and assigns, D O T H COVENANT, promise and agree to and with the said Company, its successors and assigns, that it or they shall well and truly pay or cause to be paid to the said Company, its successors and assigns, the said sum of money above mentioned, together with the interest thereon at the rate of six per centum per annum, on the days and times and in the manner above mentioned; and also shall and will pay and discharge all taxes, rates and assessments wherewith the said land may be rated and charged after this date;

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.
No. 3.

- 10 IN CONSIDERATION WHEREOF, and on the payment of the said sum of money, with interest thereon as aforesaid, the said Company DOTH for itself, its successors and assigns, COVENANT, promise and agree to and with the said purchaser, its successors and assigns, to convey and assure or cause to be conveyed and assured to the said purchaser, its successors or assigns, by a good and sufficient Deed in fee simple, all those the said pieces or parcels of land above described, together with the appurtenances thereto belonging or appertaining, freed and discharged from all encumbrances, but subject to the conditions and reservations expressed in the original grant thereof from the Crown;

Agreement
between
The Alberta
Railway
and Coal
Company,
and The
Knight
Sugar
Company
Limited
re Purchase
of Lands.

continued

- 20 And also shall and will suffer and permit the said purchaser, its successors and assigns, to occupy and enjoy the same until default be made in the payment of the said sums of money or the interest thereon or any part thereof, on the days and times and in the manner above mentioned; subject nevertheless to impeachment for voluntary and permissive waste;

- AND it is hereby expressly understood that time is to be considered the essence of this agreement, and unless the payments aforesaid are punctually made at the days and times above mentioned, and unless the purchaser carries out in their entirety, the conditions of this Contract, the performance of each and every of the conditions and stipulations above recited, being the conditions precedent and of the essence of this Contract,
- 30 then the Company shall have the right by notice sent by registered mail, addressed to the purchaser at its address as above given, to notify it of their intention to declare this Contract null and void, and unless the default therein complained of is remedied within sixty days from the date of such notice, this agreement may be cancelled by the Company, and shall thereupon become null and void, and all payments made theretofore on account thereof by the purchaser, shall be forfeited, and the Company shall be at liberty to re-enter upon, and re-sell the said lands, without any further declaration of forfeiture, and without any other act by
- 40 the Company to be performed, or any suit or legal proceeding to be brought or taken of any kind whatsoever. In case the Company at any time hereafter become entitled to cancel this agreement, they shall have the right to have, hold, occupy, possess and enjoy the said lands, and any improvements thereon, without suit, hindrance, interruption or denial of said purchaser, or any other person or persons whatsoever.

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 3.

Agreement
between
The Alberta
Railway
and Coal
Company,
and The
Knight
Sugar
Company
Limited
re Purchase
of Lands.

continued

AND it is hereby agreed that it shall not be incumbent on the Company to recognize any assignment of the rights of the purchaser under this agreement, and in no case will any such assignment be recognized, unless the same shall be for the entire interest of the purchaser, and approved and countersigned by the Land Commissioner of the Company.

AND I, JESSE KNIGHT, of Provo, in the State of Utah, one of the United States of America, Mining Operator, hereby bar and release in favour of the Knight Sugar Company, Limited, any right that I may now have or may hereafter be entitled to, in respect of the above described lands.

10

AND WE, the Sugar Company and the said Jesse Knight, hereby acknowledge that the covenants of the Alberta Railway and Coal Company, contained in a certain agreement bearing date the 19th day of July, A.D. 1901, made between the said Jesse Knight, the Alberta Railway and Coal Company and the Canadian North West Irrigation Company have been fully carried out and discharged by the execution, by it, of this agreement, and we, for our successors, heirs, executors, administrators and assigns, hereby discharge and release the Company from all claims of every kind on the part of either of us, under the said agreement, and in respect of the lands in said agreement, described as Parcel Number Two (2).

20

IN WITNESS WHEREOF, the said Company, by Elliott Torrance Galt, their President and duly constituted Attorney, and the said Knight Sugar Company, Limited, hath caused its Corporate Seal to be hereunto attached, attested by the signatures of the President and Secretary thereof, and the said Jesse Knight hath also hereunto set his hand and seal, on the day and year first above mentioned.

SIGNED, SEALED AND DELIVERED by the said
THE ALBERTA RAILWAY
AND COAL COMPANY, by
ELLIOTT TORRANCE GALT
their President and duly constituted Attorney,

in the presence of:

"E. H. Wilson"

"E. T. Galt"

Seal

30

AND by the KNIGHT SUGAR
COMPANY LIMITED, and
JESSE KNIGHT,

in the presence of:

"E. H. Wilson"

KNIGHT SUGAR COMPANY,
LIMITED,

"Jesse Knight" President.

"Geo. W. Green Jr." Secretary.

"Jesse Knight"

Seal

40

No. 4.

Copy of Original Grant from The Crown to The Alberta Railway and
Coal Company.
(Plaintiff's Document).

A.O. 183

Recorded in the Department
of the Interior the 24th
August 1901.

Liber 34. Folio 268

Wm. M. Goodeve (Sgd).

10 John J. McGee,
Deputy Governor.
SEAL

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 4.
Copy of
Original
Grant from
the Crown
to The
Alberta
Railway
and Coal
Company.

C A N A D A

Edward the Seventh, by the Grace of God, of the United Kingdom
of Great Britain and Ireland, King, Defender of the Faith &c. &c. &c.
To all to whom these Presents shall come GREETINGS:

WHEREAS the Lands hereinafter described are part of the lands
known as "Dominion Lands" within the meaning of "The Dominion
Lands Act".

- 20 And Whereas THE ALBERTA RAILWAY AND COAL COMPANY
HAS applied for a grant of the said lands and his claim to such grant
having been duly investigated by Us he has been found duly entitled
thereto.

- NOW KNOW YEA, that by these Presents We do grant, convey
and assure, unto the said THE ALBERTA RAILWAY AND COAL
COMPANY its Successors and Assigns forever, all those Parcels or
Tracts of Land, situate lying and being in the Second Township in the
Nineteenth Range West of the Fourth Meridian in the Provisional Dis-
trict of Alberta in the North West Territories in Our Dominion of Can-
30 ada, and being composed of The South West Quarter of Section Seven-
teen (17) the Whole of Sections Eighteen (18) and Nineteen (19) the
North East Quarter of Section Twenty-two (22) the whole of Section
Twenty-three (23) the North West Quarter of Section Twenty-four (24)
the whole of Section Twenty-five (25) the North East Quarter of Section
Twenty-six (26) the whole of Sections Twenty-seven (27) Twenty-eight
(28) Twenty-nine (29) Thirty (30) Thirty-one (31) Thirty-two (32)
Thirty-three (33) Thirty-four (34) Thirty-five (35) and Thirty-six (36)
all of the said Township, containing by admeasurement together Nine
thousand Six Hundred (9600) acres more or less Saving and Reserving,
40 nevertheless, unto Us, Our Successors and Assigns the free uses, passage

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 4.
Copy of
Original
Grant from
the Crown
to The
Alberta
Railway
and Coal
Company.

continued

and enjoyment of, in over and upon all navigable waters that now are or may be hereafter found on, or under or flowing through or upon any part of the said parcels of tracts of land, also saving excepting and reserving unto Us, Our Successors and Assigns all coal mines, coal pits, seams and veins of coal, as well open as not open, which shall or may be wrought, found out or discovered or which may exist within, upon or under the said lands, together with full power to work the same, and for this purpose to enter upon and use and occupy the said lands or so much thereof and to such an extent as may be necessary for the effectual working of the said mines, pits, seams and veins, and also reserving thereout and therefrom all rights of Fishery and Fishing and occupation in connection therewith upon, around and adjacent to said lands, and also the privilege of landing from and mooring boats and vessels upon any part of the said lands, and using the said lands in connection with the rights of Fishery and Fishing hereby reserved, so far as may be reasonably necessary to the exercise of such rights. 10

TO HAVE AND TO HOLD THE said Parcels or Tracts of land unto the said THE ALBERTA RAILWAY AND COAL COMPANY, its Successors and Assigns forever.

GIVEN under the Great Seal of Canada:—

20

WITNESS John Joseph McGee, Esquire, Deputy of Our Right Trusty and Right Well Beloved Cousin, the Right Honourable Sir Gilbert John Elliot Earl of Minto and Viscount Melgund of Melgund, County of Forfar in the Peerage of the United Kingdom, Baron Minto of Minto County of Roxburgh in the Peerage of Great Britain, Baronet of Nova Scotia, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George etc. etc. Governor General of Canada.

AT OTTAWA this Twenty third day of August in the year of Our Lord, One thousand nine hundred and one and in the first year of Our Reign.

By Command

30

B. Pellitier
Acting Under-Secretary
of State.

T. G. Rothwell.
Act. Deputy of the
Minister of the Interior.

Fiat No. 82119.

A. R. & C. Co. No. 418.

No. 5.

Duplicate Certificate of Title to The Alberta Railway and Coal Company.
(Plaintiff's Document).

A.O. 183

PROVINCE OF ALBERTA

(S E A L)

CANADA

DUPLICATE CERTIFICATE OF TITLE

CANCELLED

10 EX. MINERALS

Asse. Fund Value.....
Unearned Inc. Value.....

Refer Cert. No.

SOUTH ALBERTA LAND REGISTRATION DISTRICT.

THIS IS TO CERTIFY that THE ALBERTA RAILWAY AND
COAL COMPANY

is now the owner of an estate in fee simple

20 of and in THE SOUTH WEST QUARTER OF SECTION SEVEN-
TEEN (17), THE WHOLE OF SECTIONS EIGHTEEN (18) AND
NINETEEN (19); THE NORTH EAST QUARTER OF SECTION
THIRTY TWO (22), THE WHOLE OF SECTION TWENTY
THREE (23), THE NORTH WEST QUARTER OF SECTION
THIRTY FOUR (24), THE WHOLE OF SECTION TWENTY
FIVE (25), THE NORTH EAST QUARTER OF SECTION TWEN-
TY SIX (26), THE WHOLE OF SECTIONS TWENTY SEVEN
(27), TWENTY EIGHT (28), TWENTY NINE (29), THIRTY (30),
THIRTY ONE (31), THIRTY TWO (32), THIRTY THREE (33),
THIRTY FOUR (34), THIRTY FIVE (35) AND THIRTY SIX (36)
30 ALL IN TOWNSHIP TWO (2) RANGE NINETEEN (19) WEST
OF THE FOURTH MERIDIAN CONTAINING BY ADMEASURE-
MENT TOGETHER NINE THOUSAND SIX HUNDRED (9,600)
ACRES MORE OR LESS.

RESERVING UNTO HIS MAJESTY, HIS SUCCESSORS AND AS-
SIGNS ALL COAL MINES, COAL PITS, SEAMS. AND VEINS OF
COAL, AND THE RIGHT TO WORK THE SAME, AND

subject to the encumbrances, liens and interests notified by memorandum
underwritten or endorsed hereon, or which may hereafter be made in the
register.

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 5.

Duplicate
Certificate
of Title to
The Alberta
Railway
and Coal
Company.

*In the
Supreme
Court of
Alberta*

IN WITNESS WHEREOF I have hereunto subscribed my name and affixed my official seal this TWENTIETH day of SEPTEMBER A.D. 1901.

(SGD.) W. ROLAND WINTER REGISTRAR, (L.S.)
South Alberta Land Registration District.

Exhibits
and
Documents.

P.O. Address _____

No. 5.

(OVER)

Duplicate
Certificate
of Title to
The Alberta
Railway
and Coal
Company.

This Certificate is cancelled EX. MINERALS and a new Certificate _____ issued to _____ KNIGHT SUGAR CO. LTD. _____ 10
under Transfer to _____ THEM _____ from the above named registered owner dated 22 JULY 1913 and Registered at 1.29 o'clock P.M., this 19 day of FEBY. A.D. 1914 as No. 554 A.Y.

continued

(SGD) A. T. KINNAIRD
AD Registrar.

No. 6.

No. 6.

Transfer
of Land,
Alberta
Railway
and
Irrigation
Company
to Knight
Sugar
Company,
Limited.

Transfer of Land, Alberta Railway and Irrigation Company to Knight Sugar Company, Limited.

(Plaintiff's Document). 20

| | |
|--------------|------------|
| Last Value | \$35430.60 |
| Improvements | _____ |
| Total | 35430.60 |

RWS
JC

GBF.

THE LAND TITLES ACT

TRANSFER

Pt. A.R. 247

THE ALBERTA RAILWAY AND IRRIGATION COMPANY (hereinafter called "the Company") being the registered owner in fee simple, but subject to the encumbrances, liens and interests hereunder written of endorsed herein, in all that certain parcel or tract of land situate West of the Fourth Meridian in the Province of Alberta, which may be more particularly described as being: 30

FIRSTLY Southwest quarter of Section Seventeen (17) All of Section Eighteen (18) and Nineteen (19) North East quarter of Section Twenty-two (22) All of Section Twenty-three North half of Section Twenty-four (24) All of Sec-

tion Twenty-five (25) North East quarter of Section Twenty-six (26) All of Sections Twenty-seven (27) Twenty-eight (28) Twenty-nine (29) Thirty (30) Thirty-one (31) Thirty-two (32) Thirty-three (33) Thirty-four (34) Thirty-five (35) and Thirty-six (36);

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 6.

Transfer
of Land,
Alberta
Railway
and
Irrigation
Company
to Knight
Sugar
Company,
Limited.

continued

SECONDLY All those portions of the North half of Section Seven (7) Northwest quarter of Section Thirteen (13) North half of Section Fourteen (14) Northeast quarter of Section Fifteen (15) All of Section Twenty (20) West half and Northeast quarter of Section Twenty-one (21) West half and Southeast quarter of Section Twenty-two (22) South half of Section Twenty-four (24) which lie on the North side of Milk River as shown upon a plan of survey of Township Two (2) Range Nineteen (19) signed at Ottawa on the 17th May 1909 by Edouard Deville, Surveyor General;

10

THIRDLY All those portions of the East half and Northeast quarter of Section Seventeen (17) which lie to the West of Milk River as shown upon a plan of survey of Township Two (2) Range Nineteen (19) signed at Ottawa the 17th May 1909 by Edouard Deville, Surveyor General;

20

The lands, Firstly, Secondly and Thirdly above described being in Township Two (2) and Range Nineteen (19).
ESD.

DOTH HEREBY, in consideration of the sum of One (1) Dollar of lawful money of Canada, now paid to it by Knight Sugar Company Limited, of Raymond in the Province of Alberta, the receipt whereof is hereby, by it acknowledged, Transfer to the said Knight Sugar Company Limited, all its estate and interest in the said land, excepting therefrom all coal and other minerals in and under the said land, and the right to use so much of said land or the surface thereof as the Company may consider necessary for the purpose of working and removing the said coal and minerals, and any portion of said land heretofore taken for roads or public purposes.

30

IN WITNESS WHEREOF the said THE ALBERTA RAILWAY AND IRRIGATION COMPANY hath caused these presents to be executed this Twenty-second day of July 1913.

THE ALBERTA RAILWAY AND IRRIGATION COMPANY

George Bury (Sgd)
President.

ESD.

H. C. Oswald (Sgd)
Secretary.

40 Seal

No. 7.

*In the
Supreme
Court of
Alberta*

**Duplicate Certificate of Title in name of Knight Sugar Company Limited.
(Plaintiff's Document).**

Exhibits
and
Documents.

5. U. 222

Province of Alberta

(S E A L)

CANADA

DUPLICATE CERTIFICATE OF TITLE

Duplicate
Certificate
of Title
in name of
Knight
Sugar
Company
Limited.

Assce. Fund Value.....

Refer Cert. No. A.O. 183

Unearned Inc. Value.....

10

SOUTH ALBERTA LAND REGISTRATION DISTRICT.

THIS IS TO CERTIFY THAT KNIGHT SUGAR COMPANY LIMITED is now the owner of an estate in fee simple of and in THE WHOLE OF SECTION EIGHTEEN (18) IN TOWNSHIP TWO (2) RANGE NINETEEN (19) WEST OF THE FOURTH MERIDIAN IN THE PROVINCE OF ALBERTA CONTAINING SIX HUNDRED AND FORTY (640) ACRES MORE OR LESS. EXCEPTING THEREOUT ALL COAL AND OTHER MINERALS, AND subject to the encumbrances, liens and interests notified by memorandum underwritten or endorsed hereon, or which may hereafter be 20 made in the register.

IN WITNESS WHEREOF I have hereunto subscribed my name and affixed my official seal this NINETEENTH day of FEBRUARY A.D. 1914.

(SGD.) E. J. FLAVIN A.D. REGISTRAR, (L.S.)

P.O. Address RAYMOND,
ALBERTA.

South Alberta Land Registration
District.

No. 8.

**Memorandum of Association of The Knight Sugar Factory.
(Defendant's Document).**

IN THE MATTER OF THE COMPANIES ORDINANCE.
MEMORANDUM OF ASSOCIATION OF THE KNIGHT SUGAR
FACTORY, A COMPANY LIMITED BY SHARES.
Incorporated, October 17th, 1902.

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 8.

Memoran-
dum of
Association
of
The Knight
Sugar
Factory.

1. The name of the Company is the "Knight Sugar Company Limited."
2. The registered office of the Company will be situate in the Village of Raymond, in the District of Alberta in the North West Territories.
3. The objects for which the Company is established are:
 - (a) To erect and operate a manufactory for the manufacture of Beet Sugar and all other saccharine products, to buy, manufacture, refine, prepare and deal in all such products and the sale of the same, either wholesale or retail, and generally to exercise all the powers usually exercised by manufacturers of and dealers in sacharine products.
 - (b) To, from time to time purchase and acquire any landed property in the North West Territories of Canada, with power to sell, mortgage, hypothecate or lease the same or any part thereof as may be deemed advisable and to develop the resources of and turn to account the lands, buildings and rights of the Company for the time being in such lands as the Company may think fit and in particular by draining, fencing, planting, building, improving, farming, ranching and by promoting immigration, establishing towns, villages and settlements, and for such purpose to carry on the business of farmers, ranchers and dealers in live stock of all kinds, and to open up or establish stone quarries, lime kilns, brick yards and lumber yards, and to carry on the business of dealers in stone, lime, bricks and lumbers or contractors for the construction of works, whether public or private which may seem calculated directly or indirectly to benefit the Company's property and to construct, carry out, support, maintain, improve, manage, work, operate, control and superintend Hotels, Churches or other places for religious assemblies, parks, schools, places of recreation, baths, work houses and any other works and conveniences, which may seem directly or indirectly conducive to any of these objects, and to contribute to or otherwise aid or take part in the construction, carrying out, support, maintenance, improvement, management, working, operating, controlling and superintending the same.

*In the
Supreme
Court of
Alberta*

4. The liability of the members is limited.
5. The capital of the Company is One Million Dollars, divided into ten thousand shares of One Hundred Dollars each.

Exhibits
and
Documents.

No. 8.
Memoran-
dum of
Association
of
The Knight
Sugar
Factory.
continued

We, the several persons whose names and addresses are subscribed are desirous of being formed into a Company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the Company set opposite to our respective names.

No. 9.

Agreement for Sale of Forty Acres from The Knight Sugar Company to W. J. Hart. (Defendant's Document).

10

No. 165.

No. 9.
Agreement
for Sale of
Forty Acres
from The
Knight
Sugar
Company
to
W. J. Hart.

ARTICLES OF AGREEMENT, made in duplicate this 1st day of April A.D. 1904 between THE KNIGHT SUGAR COMPANY, of Raymond, Alberta, Canada, hereinafter called the "Company", of the first part, and W. J. Hart of Raymond Alta _____ hereinafter called the "Purchaser", of the second part;

WHEREAS, the said Company hath agreed to sell to said Purchaser . . . , and the said Purchaser hath agreed to purchase of and from the said Company the lands, hereditaments and premises hereinafter mentioned, that is to say, all and singular that certain parcel or tract of land, West of the Fourth Meridian, in the District of Alberta, which are described as follows, to wit: The South East $\frac{1}{4}$ of the South West $\frac{1}{4}$ of Sec. "12 Twp. 6 Range 20, comprising Forty _____ acres of land, more or less; together with the privileges or appurtenances thereunto belonging or in anywise appertaining, excepting and reserving thereout such strip or strips of land as may at any time hereafter be selected by the Company or its authorized agent or agents, of sufficient width, to be used as a right of way by said Company for irrigation canals or ditches, or branches thereto, or by any person or persons authorized by such Company to construct, operate or maintain a branch canal or ditch, or canals or ditches connecting with the irrigation system of said Company, and the only compensation to be given by the said Company to the Purchaser . . . shall be an amount equal to the actual purchase money received by the Company for the area comprised in the strip or strips so taken, it being hereby expressly agreed and understood that the Company shall mean and include such Company, its successors or assigns, and also reserving to the Company, its successors and assigns, the right to enter in and upon the lands above described for the purpose of laying

20

30

out, constructing, maintaining, changing and repairing any and all extensions of its main canals or ditches and all laterals or subsidiary canals or ditches connected with or fed from any of its main canals or ditches upon or through any portion of said premises herein-before described, at or for the price or sum of Two Hundred & Forty Dollars, lawful money of Canada, payable at the office of the Land Department of the Company, at Raymond, in said District, at the times and in the manner following:

Twenty-four & no|100 Dollars paid at the time of the execution and delivery of this instrument, the remainder Two Hundred & Sixteen Dollars to be paid in nine equal consecutive annual installments of Twenty-four Dollars each; the first of said nine installments to be paid on the 1st day of April A.D. 1904, and one installment to be paid on the 1st day of April of each and every year thereafter until the full purchase price shall be paid.

It is further agreed that the unpaid purchase price shall bear interest at the rate of six per cent. (6%) per annum from date, payable with each and every installment, on the 1st day of April of each and every year hereafter until the whole purchase price shall be fully paid.

| 20 | Payments No. | Annual Payment Principal | Annual Payment Interest | Annual Payment Total | Month | When Due | |
|----|--------------|--------------------------|-------------------------|----------------------|-------|----------|------|
| | | | | | | Day | Year |
| | 1 | 24 00 | 12 96 | 36 96 | April | 1st | 1905 |
| | 2 | 24 00 | 11 52 | 35 52 | " | " | 1906 |
| | 3 | 24 00 | 10 08 | 34 08 | " | " | 1907 |
| | 4 | 24 00 | 8 64 | 32 64 | " | " | 1908 |
| | 5 | 24 00 | 7 20 | 31 20 | " | " | 1909 |
| | 6 | 24 00 | 5 76 | 29 76 | " | " | 1910 |
| | 7 | 24 00 | 4 32 | 28 32 | " | " | 1911 |
| | 8 | 24 00 | 2 88 | 26 88 | " | " | 1912 |
| 30 | 9 | 24 00 | 1 44 | 25 44 | " | " | 1913 |

NOW IT IS HEREBY AGREED between the parties aforesaid in the manner following, that is to say: the said Purchaser for himself his heirs, executors and administrators, doth covenant, promise and agree to and with the Company, its successors and assigns, that he or they shall and will well and truly pay or cause to be paid to the said Company, its successors or assigns, the said sum of money together with the interest thereon, on the days and times and in the manner above mentioned and also shall and will pay and discharge all taxes, rates and assessments wherewith the said land may be rated or charged from and after 40 this date.

IN CONSIDERATION WHEREOF and on payment of the said sum of money, with interest as aforesaid, in manner aforesaid, the Company doth for itself, its successors and assigns, covenant, promise and

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 9.

Agreement
for Sale of
Forty Acres
from The
Knight
Sugar
Company
to
W. J. Hart.

continued

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 9.

Agreement
for Sale of
Forty Acres
from The
Knight
Sugar
Company
to
W. J. Hart.
continued

agree to and with the Purchaser his heirs, executors, administrators and assigns, to convey and assure or cause to be conveyed and assured to the said Purchaser his heirs, executors, administrators or assigns, by a good and sufficient conveyance in fee simple according to the laws governing Real Property in the North-West Territories of Canada, the said tract or parcel of land together with all the privileges and appurtenances thereto belonging, but subject to the reservations, conditions and provisoes contained in the original grant from the Crown.

AND the Company hereby agrees that it will suffer and permit the Purchaser, his heirs, executors, administrators or assigns, to occupy and enjoy the said lands, until default be made in payment of the purchase money or any part thereof on the day and time and in the manner above provided, or in the observance of the proviso above recited. 10

AND it is hereby expressly understood that time is to be considered the essence of this agreement, and unless the payments aforesaid are punctually made at the days and times above mentioned, and unless the Purchaser carries out in their entirety, the conditions of this contract, the performance of each and every of the conditions and stipulations above recited, being the conditions precedent and of essence of this contract, then the Company shall have the right by notice sent by registered mail addressed to the Purchaser at his address as above given, to notify him of their intention to declare this contract null and void, and unless the default therein complained of is remedied within sixty days from the date of such notice, this agreement may be cancelled by the Company, and shall thereupon become null and void, and all payments made theretofore on account thereof by the Purchaser, shall be forfeited, and the Company shall be at liberty to re-enter upon, and re-sell the said lands, without any further declaration or forfeiture and without any other act by the Company to be performed, or any suit or legal proceeding to be brought or taken of any kind whatsoever. In case the Company at any time here- after become entitled to cancel this agreement, they shall have the right to have, hold, occupy, possess and enjoy the said land and any improvements thereon, without suit, hindrance, interruption or denial of said Purchaser, or any other person or persons whatsoever. 20 30

AND it is hereby agreed that it shall not be incumbent on the Company to recognize any assignment of the rights of the Purchaser under this agreement, and in no case will any such assignment be recognized, unless the same shall be for the entire interest of the Purchaser, and approved and countersigned by the land Commissioner of the Company.

IN WITNESS WHEREOF, the said Company by EPHRAIM P. ELLISON, its Manager and duly constituted Attorney, and the said Purchaser have executed these articles on the day and year first above mentioned. 40

SIGNED, SEALED AND DELIVERED by the
said KNIGHT SUGAR COMPANY, LIMITED,
by EPHRAIM P. ELLISON, its Manager and duly
constituted Attorney, in presence of

“J. G. Moyes”

and by the said

“W. J. Hart”

in presence of

“J. G. Moyes”

10 (Seal)

THE KNIGHT
SUGAR
COMPANY,
Limited.

By “Ephraim P.
Ellison”

Manager.

“W. J. Hart”

*In the
Supreme
Court of
Alberta*

—
Exhibits
and
Documents.

—
No. 9.

—
Agreement
for Sale of
Forty Acres
from The
Knight
Sugar
Company
to
W. J. Hart.

continued

No. 10.

Transfer of Land from The Knight Sugar Company to Arthur H. Williams.

(Defendant's Document).

The Land Titles Act, 1894.

TRANSFER OF LAND

KNIGHT SUGAR COMPANY, LIMITED, hereinafter called "the Company" being registered as the owner of an estate in fee simple, subject however to such encumbrances, liens and interests as are notified by memorandum underwritten or endorsed hereon, in all that certain tract or parcel of land situated west of the fourth Meridian, in the Province of Alberta, which may be more particularly known and described as being: 10

The South East Quarter of the South West Quarter of Section Twelve (12), Township Six (6), Range Twenty (20), West of the Fourth Meridian, Reserving unto His Majesty all coal and unto the A. R. & I. Company all other minerals.

DOTH HEREBY in consideration of the sum of \$600.00 dollar paid to it by Arthur H. Williams of Madison, Ohio, Capitalist, hereinafter called "the purchaser," the receipt of which sum is hereby acknowledged, TRANSFER to the said 20

Arthur H. Williams

all its estate and interest in the said piece of land ~~and subject to the~~ reservation above mentioned, and to the restriction and proviso that no building, tent or erection now in or upon the said premises or that may hereafter be placed or erected thereon, shall at any time be used or occupied as a place wherein intoxicating liquors are sold, traded or bartered, whether by license or otherwise, or as a place or house of prostitution or for any other immoral or illegal purpose, and that in the event of any breach of this proviso or restriction, the lands and premises above described shall be forfeited by the holder or owner thereof and shall revert to the Company, who shall thereafter hold the same as and for their own absolutely, which restriction shall run with the land. 30

And the purchaser for ~~himself~~ self heirs, executors, administrators or assigns, hereby covenants with the Company, its successors or assigns, that ~~and they will~~ and they will duly observe and keep the above proviso, and in case of breach thereof the Company, its successors or assigns, may re-enter upon and retake the lands hereby conveyed, and hold the same absolutely as its own, free and clear from all and every claim thereto on the ~~part of the purchaser or any person claiming through or under~~ and

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 10.

Transfer of
Land from
The Knight
Sugar
Company
to Arthur
H. Williams

~~the purchaser for, — self — heirs, executors, administrators or assigns, further specially agrees, that in addition to any other method of proving such breach which the Company, its successors or assigns, may be able to adduce, the fact of the occupant for the time being of such premises having obtained a license for the sale of intoxicating liquors thereon, or of a conviction of having been made in any court against such occupant, or any person for whose act such occupant is responsible in respect of any act which it committed would be a breach of such proviso or restriction, shall be conclusive evidence of such breach.~~

10 IN WITNESS WHEREOF Knight Sugar Company, Limited hath caused its duly constituted attorney to set his hand and seal hereto, as for and in behalf of it, the Company this 4th day of March A.D. 1918.

SIGNED, SEALED AND DE-

LIVERED by the said
KNIGHT SUGAR COMPANY
LIMITED by
(Seal) Raymond Knight
its duly constituted Attorney,
in the presence of

20 "David H. Kinsey" (Sgd.)

KNIGHT SUGAR CO. LIMITED
"Raymond Knight" (Sgd.)
Pres.

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 10.

Transfer of
Land from
The Knight
Sugar
Company
to Arthur
H. Williams

continued

No. 11.

Transfer of Land from The Knight Sugar Company to Edgar Kesler.
(Defendant's Document).

THE LAND TITLES ACT, 1894.

TRANSFER OF LAND

30 KNIGHT SUGAR COMPANY, LIMITED, hereinafter called "the Company" being registered as the owner of an estate in fee simple, subject however to such encumbrances, liens and interests as are notified by memorandum underwritten or endorsed hereon, in all that certain tract or parcel of land situated west of the fourth Meridian, in the Province of Alberta, which may be more particularly known and described as being:
The North West Quarter of Section Thirteen (13) in Township Five (5) Range Twenty (20) West of the Fourth Meridian in the Province of Alberta, containing One hundred and sixty (160) acres more or less, EXCEPTING thereout and therefrom forty eight and two tenths (48.2) acres more or less, being the A. R. & I. Company's canal right of way, and also excepting two and nine tenths (2.90) acres for a roadway, being a strip of land sixteen (16) feet wide, along the north end of the above described

No. 11.

Transfer of
Land from
The Knight
Sugar
Company
to Edgar
Kesler.

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 11.

Transfer of
Land from
The Knight
Sugar
Company
to Edgar
Kesler.

continued

parcel for a roadway to reach the West half of the North East Quarter of section thirteen (13) in township Five (5) Range twenty (20) West of the Fourth Meridian. RESERVING unto His Majesty all coal and unto the Alberta Railway and Irrigation Company all other minerals.

DOTH HEREBY in consideration of the sum of \$1633.50 dollars paid to it by Edgar Kesler, of Raymond, Alberta, Canada (Farmer) hereinafter called "the purchaser," the receipt of which sum is hereby acknowledged, TRANSFER to the said

EDGAR KESLER

10

all its estate and interest in the said piece of land but subject to the reservation above mentioned.

IN WITNESS WHEREOF Knight Sugar Company, Limited hath caused its duly constituted attorney to set his hand and seal hereto, as for and in behalf of it, the Company this eighth day of April A.D. 1925.

SIGNED, SEALED AND DELIV-

ERED by the said
KNIGHT SUGAR COMPANY,
LIMITED by

O. Raymond Knight.

(Seal)

its duly constituted Attorney, in
the presence of
"Fannye H. Walker" (Sgd.)

"O. Raymond Knight"
(Sgd.)

20

No. 12.

Letter,
January
28th, 1925,
from The
Land Titles
office to
Standard
Bank of
Canada,
Raymond,
Alberta, re
N.W. ¼-
13-5-20-
W 4th.

No. 12.

Letter, January 28th, 1925, from The Land Titles office to Standard Bank of Canada, Raymond, Alberta re N.W. ¼-13-5-20-W 4th.

(Defendant's Document).

SOUTH ALBERTA LAND REGISTRATION DISTRICT

Land Titles Office

30

Calgary, Alberta.

January 28th 1925.

Address your reply to
The Registrar
Land Titles Office
Calgary, Alberta

Dear Sir:—

Re N.W. ¼ 13-5-20-W 4th

With reference to your letter of the 26th instant, I am returning herewith Transfers, Knight Sugar Co. Ltd. to Kesler, and Kesler to Iwaasa, and blank cheque.

40

In connection with the Transfer from the Knight Sugar Co., have an Affidavit of Value attached and have the mineral reservations read:

"Reserving unto His Majesty all coal and unto the Alberta Railway and Irrigation Co. all other minerals."

There is an exception of 2.90 acres for a Roadway which should be set out.

10 In the Transfer from Kesler, the property should be described as in the previous Transfer showing the exceptions and reservations. The description as at present set out is not acceptable. All alterations should be initialed.

McK|MM

Enc.

Standard Bank of Canada,
Raymond, Alta.

Yours truly,

"Wilford Forbes"

Registrar.

No. 13.

Transfer of Land from The Knight Sugar Company to J. Urban Allred.
(Defendant's Document).

THE LAND TITLES ACT, 1894.

TRANSFER OF LAND

20 KNIGHT SUGAR COMPANY, LIMITED, hereinafter caller "the Company" being registered as the owner of an estate in fee simple, subject however to such encumbrances, liens and interests as are notified by memorandum underwritten or endorsed hereon, in all that certain tract or parcel of land situated west of the fourth Meridian, in the Province of Alberta, which may be more particularly known and described as being: The South half of the South West Quarter of Section Twenty eight (28) in Township Five (5) in Range Twenty (20) West of the Fourth Meridian in the Province of Alberta, RESERVING THEREUNTO HIS MAJESTY all coal, and unto the Alta. Ry. & Irrigation Co. all other
30 minerals; also reserving thereunto Thirty and One tenth acres for the Alberta Railway & Irrigation Company's canal right of way.

DOTH HEREBY in consideration of the sum of \$249.50 dollars paid to it by J. Urban Allred of Raymond, Alberta, Canada (Farmer) hereinafter called "the purchaser," the receipt of which sum is hereby acknowledged, TRANSFER to the said

J. URBAN ALLRED

all its estate and interest in the said piece of land but subject to the reservation above mentioned.

IN WITNESS WHEREOF Knight Sugar Company, Limited hath

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 12.

Letter,
January
28th, 1925,
from The
Land Titles
office to
Standard
Bank of
Canada,
Raymond,
Alberta, re
N.W. ¼-
13-5-20-
W 4th.

continued

No. 13.

Transfer of
Land from
The Knight
Sugar
Company
to J. Urban
Allred.

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 13.

Transfer of
Land from
The Knight
Sugar
Company
to J. Urban
Allred.

continued

caused its duly constituted attorney to set his hand and seal hereto, as
for and in behalf of it, the Company this 4th day of November A.D. 1916.

SIGNED, SEALED AND DELIV-

ERED by the said
KNIGHT SUGAR COMPANY,
LIMITED by

Raymond Knight

(Seal)

its duly constituted Attorney, in
the presence of

"Fannye H. Walker" (Sgd.)

KNIGHT SUGAR COMPANY,
LIMITED

"Raymond Knight" (Sgd.)

10

No. 14.

Transfer of Land from The Knight Sugar Company to Alexander W.
H. Thompson and others.

(Defendant's Document).

THE LAND TITLES ACT, 1894.

TRANSFER OF LAND

No. 14.

Transfer of
Land from
The Knight
Sugar
Company to
Alexander
W. H.
Thompson
and others.

KNIGHT SUGAR COMPANY, LIMITED, hereinafter called "the
Company" being registered as the owner of an estate in fee simple, sub-
ject however to such encumbrances, liens and interests as are notified by 20
memorandum underwritten or endorsed hereon, in all that certain tract
or parcel of land situated west of the fourth Meridian, in the Province of
Alberta, which may be more particularly known and described as being:

The SOUTH WEST QUARTER of the North West Quarter of
Section Thirty Three (33) in Township Five (5) in Range
Twenty (20), West of the Fourth Meridian. Reserving unto
His Majesty all coal and unto the Alberta Railway & Irrigation
Co., all other minerals.

F.H.W.

DOTH HEREBY in consideration of the sum of \$240.00 dollars paid
to it by Alexander W. H. Thompson, Harry H. Baines and William Shaw 30
Henry, Real Estate Agents, all of High River, Alberta, Canada, herein-
after called "the purchaser," the receipt of which sum is hereby acknow-
ledged, TRANSFER to the said Alexander W. H. Thompson, Harry H.
Baines & William Shaw Henry.

all its estate and interest in the said piece of land but subject to the reser-
vation above mentioned, and to the restriction and proviso that no build-
ing, tent or erection now in or upon the said premises or that may here-
after be placed or erected thereon, shall at any time be used or occupied as
a place wherein intoxicating liquors are sold, traded or bartered, whether

by license or otherwise, or as a place or house of prostitution or for any other immoral or illegal purpose, and that in the event of any breach of this proviso or restriction, the lands and premises above described shall be forfeited by the holder or owner thereof and shall revert to the Company, who shall thereafter hold the same as and for their own absolutely, which restriction shall run with the land.

- And the purchaser for themselves their heirs, executors, administrators or assigns, hereby covenants with the Company, its successors or assigns, that it and they will duly observe and keep the above proviso, and
- 10 in case of breach thereof the Company, its successors or assigns, may re-enter upon and retake the lands hereby conveyed, and hold the same absolutely as its own, free and clear from all and every claim thereto on the part of the purchaser or any person claiming through or under and the purchaser for themselves their heirs, executors, administrators or assigns, further specially agrees, that in addition to any other method of proving such breach which the Company, its successors or assigns, may be able to adduce, the fact of the occupant for the time being of such premises having obtained a license for the sale of intoxicating liquors thereon, or of a conviction of having been made in any court against such occupant, or
- 20 any person for whose act such occupant is responsible in respect of any act which if committed would be a breach of such proviso or restriction, shall be conclusive evidence of such breach.

IN WITNESS WHEREOF Knight Sugar Company, Limited hath caused its duly constituted attorney to set his hand and seal hereto, as for and in behalf of it, the Company this 1st day of March A.D. 1917.

SIGNED, SEALED AND DELIVERED by the said
KNIGHT SUGAR COMPANY,
LIMITED by
30 Raymond Knight
(Seal)
its duly constituted Attorney, in
the presence of
"Fannye H. Walker" (Sgd.)

KNIGHT SUGAR CO. LTD.
per "Raymond Knight"
(Sgd.)

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 14.

Transfer of
Land from
The Knight
Sugar
Company to
Alexander
W. H.
Thompson
and others.

continued

No. 15.

**Transfer of Land from the Knight Sugar Company Limited to The
Standard Trusts Company.
(Defendant's Document).**

T R A N S F E R

K N I G H T S U G A R C O M P A N Y, L I M I T E D.,
being registered as owner of an estate in fee simple in possession subject,
however, to such encumbrances, liens and interests as are notified by
memorandum underwritten or endorsed hereon, in all those pieces or par-
cels of land known and described as follows:—

10

West half of Section Thirty-three (33),
All of Section Thirty Two (32),
All of Section Thirty-one (31),
All of Section Thirty (30),
All of Section Twenty-eight (28),
South half of Section Sixteen (16),
North half of Section Nine (9),
All in Township Four (4), in Range Twenty (20),
West of the Fourth Meridian

North half of Section Three (3),
All of Section Twenty-three (23),
All of Section Twenty-five (25),
All of Section Thirty-six (36),

20

The North West Quarter of Section Eleven (11), containing
One Hundred and Sixty (160) acres more or less, and that por-
tion of the North East Quarter of said Section Eleven (11),
which is not covered by any of the waters of a certain surveyed
lake containing one hundred and fifty (158) acres, more or less.
All of Section Ten (10), all in Township Four (4) in Range
Twenty-one (21) West of the Fourth Meridian in the Province
of Alberta.

30

RESERVING unto His Majesty, His Successors and Assigns
all coal and the right to work the same, and all other minerals
unto the Alberta Railway and Irrigation Company.

DO HEREBY in consideration of the sum of One Dollar (\$1.00) and other
valuable consideration consisting of an Assignment of Agreement made
between the Knight Sugar Company, Limited, and the O. W. Kerr Com-
pany, dated the 1st of July, 1909, and all monies owing thereunder,

paid to it by THE STANDARD TRUSTS COMPANY (the receipt of
which sum it doth hereby acknowledge, transfer to the said

40

THE STANDARD TRUSTS COMPANY
all its interest and estate in the said parcels of land.

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 15.

Transfer of
Land from
the Knight
Sugar
Company
Limited,
to The
Standard
Trusts
Company.

IN WITNESS WHEREOF, KNIGHT SUGAR COMPANY, LIMITED hath caused its duly constituted attorney to set his hand and seal hereto, as for and in behalf of it, the Company, this 28th. day of April, in the year of our Lord, one thousand nine hundred and sixteen.

SIGNED, SEALED AND DELIVERED by the said
KNIGHT SUGAR COMPANY,
LTD., by RAYMOND KNIGHT,
its duly constituted Attorney in the
10 presence of
"Norman Kimball" (Sgd.)
(SEAL)

KNIGHT SUGAR COMPANY,
LIMITED.
per "Raymond Knight"
(Sgd.) MANAGER

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 15.

Transfer of
Land from
the Knight
Sugar
Company
Limited.
to The
Standard
Trusts
Company.

continued

No. 16.

Transfer of Land from the Knight Sugar Company Limited to Ray
Powell of Raymond, Alberta.

(Defendant's Document).

THE LAND TITLES ACT, 1894.

TRANSFER OF LAND

KNIGHT SUGAR COMPANY, LIMITED, hereinafter called "the
20 Company" being registered as the owner of an estate in fee simple, sub-
ject however to such encumbrances, liens and interests as are notified by
memorandum underwritten or endorsed hereon, in all that certain tract
or parcel of land situated west of the fourth Meridian, in the Province of
Alberta, which may be more particularly known and described as being:
The South Half of the South Half of the South West Quarter Section
Thirty-two (32), Township Five (5), Range Twenty (20) W. 4th. contain-
ing forty acres, more or less, and excepting thereout 10.80 acres, more or
less, for Canal Right-of-way as shown on Plan Irr. 50, the land herein com-
prised containing 29.20 acres, more or less. Reserving unto His Majesty
30 all coal and unto the Knight Sugar Company, Ltd. all other minerals.
DOTH HEREBY in consideration of the sum of \$175.20 dollar paid to it
by Ray Powell of Raymond, Alta. Farmer, hereinafter called "the pur-
chaser," the receipt of which sum is hereby acknowledged, TRANSFER
to the said

Ray Powell

all its estate and interest in the said piece of land but subject to the reser-
vation above mentioned and to the restriction and proviso that no build-
ing, tent or erection now in or upon the said premises or that may here-
after be placed or erected thereon, shall at any time be used or occupied as

No. 16.

Transfer of
Land from
the Knight
Sugar
Company
Limited
to Ray
Powell of
Raymond,
Alberta.

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 16.

Transfer of
Land from
the Knight
Sugar
Company
Limited
to Ray
Powell of
Raymond,
Alberta.

continued

a place wherein intoxicating liquors are sold, traded or bartered, whether by license or otherwise, or as a place or house of prostitution or for any other immoral or illegal purpose, and that in the event of any breach of this proviso or restriction, the lands and premises above described shall be forfeited by the holder or owner thereof and shall revert to the Company, who shall thereafter hold the same as and for their own absolutely, which restriction shall run with the land.

And the purchaser for self heirs, executors, administrators or assigns, hereby covenants with the Company, its successors or assigns, that and they will duly observe and keep the above proviso, and in case of breach thereof the Company, its successors or assigns, may re-enter upon and retake the lands hereby conveyed, and hold the same absolutely as its own, free and clear from all and every claim thereto on the part of the purchaser or any person claiming through or under and the purchaser for, self heirs, executors, administrators or assigns, further specially agrees, that in addition to any other method of proving such breach which the Company, its successors or assigns, may be able to adduce, the fact of the occupant for the time being of such premises having obtained a license for the sale of intoxicating liquors thereon, or of a conviction of having been made in any court against such occupant, or any person for whose act such occupant is responsible in respect of any act which if committed would be a breach of such proviso or restriction, shall be conclusive evidence of such breach. 10 20

IN WITNESS WHEREOF Knight Sugar Company, Limited hath caused its duly constituted attorney to set his hand and seal hereto, as for and in behalf of it, the Company, this 28th day of February A.D. 1917.

SIGNED, SEALED AND DELIV-

ERED

by the said KNIGHT SUGAR
COMPANY LIMITED by
(Seal) Raymond Knight
its duly constituted attorney,
in the presence of

"Fannye H. Walker" (Sgd.)

"Raymond Knight" (Sgd.)

30

No. 17.

Transfer of Land from the Knight Sugar Company Limited to A. A.
Titus of Napinka, Manitoba.

(Defendant's Document).

THE LAND TITLES ACT, 1894.

TRANSFER OF LAND
(Townsite of Raymond)

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 17.

Transfer of
Land from
the Knight
Sugar
Company
Limited
to A. A.
Titus of
Napinka,
Manitoba.

KNIGHT SUGAR COMPANY, LIMITED, hereinafter called "the
Company" being registered as the owner of an estate in fee simple, sub-
10 ject however to such encumbrances, liens and interests as are notified by
memorandum underwritten or endorsed hereon of the piece of land de-
scribed as follows:

ALL AND SINGULAR that certain tract or parcel of land situate
in the Province of Alberta which may be more particularly known and
described as being: The South half of the North East quarter of Section
Two, in Township Six, in Range Twenty, West of the Fourth Meridian
in the Province of Alberta (S½-N.E.¼ 2-6-20) containing eighty acres of
land, more or less, and being subject to the reservations contained in the
transfer to the Company from the A. R. & I. Company of Lethbridge, Al-
20 berta.

DOTH HEREBY in consideration of the sum of
One ----- dollars paid to it by
A. A. Titus of Napinka, Manitoba, Farmer,
hereinafter called "the purchaser", the receipt of which sum is hereby
acknowledged, TRANSFER to the said
A. A. Titus

all its estate and interest in the said piece of land but subject to the reser-
vation above mentioned and to the restriction and proviso that no build-
ing, tent or erection now in or upon the said premises or that may here-
30 after be placed or erected thereon, shall at any time be used or occupied as
a place wherein intoxicating liquors are sold, traded or bartered, whether
by license or otherwise, or as a place or house of prostitution or for any
other immoral or illegal purpose, and that in the event of any breach of
this proviso or restriction, the lands and premises above described shall
be forfeited by the holder or owner thereof and shall revert to the Com-
pany, who shall thereafter hold the same as and for their own absolutely,
which restriction shall run with the land.

And the purchaser for himself, his heirs, executors, administrators
or assigns, hereby covenants with the Company, its successors or assigns,
40 that he and they will duly observe and keep the above proviso, and in

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 17.

Transfer of
Land from
the Knight
Sugar
Company
Limited
to A. A.
Titus of
Napinka,
Manitoba.

continued

case of breach thereof the Company, its successors or assigns, may re-enter upon and retake the lands hereby conveyed, and hold the same absolutely as its own, free and clear from all and every claim thereto on the part of the purchaser or any person claiming through or under him; and the purchaser for himself his heirs, executors, administrators or assigns, further specially agrees, that in addition to any other method of proving such breach which the Company, its successors or assigns, may be able to adduce, the fact of the occupant for the time being of such premises having obtained a license for the sale of intoxicating liquors thereon, or of a conviction having been made in any court against such occupant, or any person for whose act such occupant is responsible in respect of any act which if committed would be a breach of such proviso or restriction, shall be conclusive evidence of such breach. 10

IN WITNESS WHEREOF Knight Sugar Company, Limited hath caused its duly constituted attorney to set his hand and seal hereto, as for and on behalf of it, the Company, this eighth day of June A.D. 1909.

SIGNED, SEALED AND DELIV-

ERED by the said
KNIGHT SUGAR COMPANY,
LIMITED, by

E. P. Ellison

its duly constituted Attorney, in
presence of

"Geo. W. Green" (Sgd.)

and by the said
in presence of

"E. P. Ellison" (Sgd.)

20

No. 18.

Demand for
Transfer of
Mines and
Minerals by
the Knight
Sugar
Company
on The
Alberta
Railway
and
Irrigation
Company
and the
Canadian
Pacific
Railway
Company.

No. 18.

Demand for Transfer of Mines and Minerals by the Knight Sugar Company on The Alberta Railway and Irrigation Company and the Canadian Pacific Railway Company. 30

TO THE ALBERTA RAILWAY AND IRRIGATION COMPANY,
SUCCESSORS TO THE ALBERTA RAILWAY AND COAL COM-
PANY AND THE CANADIAN NORTHWEST IRRIGATION COM-
PANY.

AND

TO THE CANADIAN PACIFIC RAILWAY COMPANY, LESSEES
OF THE ALBERTA RAILWAY AND IRRIGATION COMPANY

TAKE NOTICE that the Knight Sugar Company Limited, a body corporate, duly incorporated under the Companies Ordinance, and having its Head Office at the Town of Raymond in the Province of Alberta 40

- as Assignees of a certain Agreement dated the 19th day of July, A.D. 1901 and made between the ALBERTA RAILWAY AND COAL COMPANY, THE CANADIAN NORTHWEST IRRIGATION COMPANY AND JESSE KNIGHT, demand a transfer of all mines and minerals, excepting coal, in and to all the lands mentioned and described as parcel No. 2 in the said Agreement, dated July 19th, 1901 and more particularly set out in the map hereto attached and bounded with a red mark and marked parcel No. 2, comprising Two hundred and twenty-six thousand (226,000) acres of land more or less, and being in Township
- 1.) Two (2), Three (3), Four (4), Five (5) and Six (6), Ranges Nineteen (19), Twenty (20) and Twenty-one (21), West of the Fourth Meridian in the Province of Alberta.

DATED at the City of Lethbridge in the Province of Alberta, this 29th day of July, A.D. 1930.

"David H. Elton"

Agent and Solicitor for the Knight Sugar Company Limited.
(with map attached)

No. 19.

- Series of Letters passing between the Knight Sugar Company Limited and
- 20 The Alberta Railway and Irrigation Company and the Canadian Pacific Railway Company.
(Defendant's Document).

KNIGHT SUGAR CO.
Limited.

Raymond, Alberta, November 22, 1907.

RE. TITLES FOR LANDS

Mr. E. H. Wilson, Compt.,
A. R. & I. CO.,
Lethbridge, ALTA.

30 Dear Sir:

We are enclosing, herewith, our check No. 6907 for \$437.80. This amount is to make payment in full on the following described pieces of land:

| | |
|--|---------------|
| N.W. ¼ of Sec. 26, Tp. 4, R. 21, 160 acres | 160.00 |
| S.E. ¼ of Sec. 12-6-20 | } 191.9 acres |
| S.E. ¼ of N.W. ¼ Sec. 7-6-19 | |
| L.S. 4 and 5 in Sec. 7, Tp. 6, R. 19, 80 acres | 80.00 |
| Accrued interest since September 1st | 5.90 |
| | <hr/> |
| | \$437.80 |

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 18.

Demand for
Transfer of
Mines and
Minerals by
the Knight
Sugar
Company
on The
Alberta
Railway
and
Irrigation
Company
and the
Canadian
Pacific
Railway
Company.
continued

No. 19

Series of
Letters
passing
between the
Knight
Sugar
Company
Limited
and The
Alberta
Railway
and
Irrigation
Company
and the
Canadian
Pacific
Railway
Company

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 19

Series of
Letters
passing
between the
Knight
Sugar
Company
Limited
and The
Alberta
Railway
and
Irrigation
Company
and the
Canadian
Pacific
Railway
Company
continued

We desire to get a title for this land, and would prefer to have a separate title for each parcel, except in the case of S.E. $\frac{1}{4}$ of Sec. 12-6-20 and S.E. $\frac{1}{4}$ of N.W. $\frac{1}{4}$ Sec. 7-6-19, which may be put in together.

The parties to whom this land has been sold, are quite anxious to get the titles, and we will thank you to push the matter through with as much despatch as possible.

Kindly acknowledge receipt, and oblige,

Respectfully,

KNIGHT SUGAR CO.
Limited.

10

Raymond, Alberta, December 10, 1907.

RE. TRANSFERS

Mr. E. H. Wilson, Compt.
A. R. & I. Company,
Lethbridge, Alta.

Dear Sir:

We beg to acknowledge receipt of "TRANSFERS" registered to us on December 7th.

Respectfully,

Knight Sugar Co., Ltd.
per "J. W. Evans"

20

JWE
FH

KNIGHT SUGAR CO.
Limited.

Raymond, Alberta, Marc. 18, 1909.

RE. PAYMENTS ON LAND

Mr. E. H. Wilson, Compt.,
A. R. & I. Company,
Lethbridge, Alta.

30

Dear Sir:

We are enclosing, herewith, our check for \$7205.02 as payment in full on the following described land:

| Description | Section | Township | Range | No. of Acres |
|--------------------|---------|----------|-------|--------------|
| West half | 35 | 5 | 20 | 320 |
| West half | 2 | 5 | 20 | 320 |
| All | 3 | 5 | 20 | 640 |
| South East quarter | 10 | 5 | 20 | 160 |

| | Description | Section | Township | Range | No. of Acres | <i>In the Supreme Court of Alberta</i> |
|----|--|---------|----------|-------|--------------|--|
| | All | 4 | 5 | 20 | 640 | |
| | South West quarter | 11 | 5 | 20 | 160 | |
| | South half of N.W. $\frac{1}{4}$ & North half of S.E. $\frac{1}{4}$ | 11 | 5 | 20 | 160 | Exhibits and Documents. |
| | All | 14 | 5 | 20 | 542.6 | |
| | East half of | 23 | 5 | 20 | 276.2 | No. 19 |
| | South East quarter | 24 | 5 | 20 | 160 | Series of |
| | South half of the N.E. $\frac{1}{4}$ | 24 | 5 | 20 | 80 | Letters |
| 10 | North half of S.W. $\frac{1}{4}$ | 24 | 5 | 20 | 80 | passing between the |
| | South half of N.W. $\frac{1}{4}$ | 24 | 4 | 20 | 80 | Knight |
| | East half | 33 | 4 | 20 | 320 | Sugar |
| | West half | 34 | 4 | 20 | 320 | Company |
| | South East quarter | 34 | 4 | 20 | 160 | Limited and The |
| | North West quarter | 35 | 4 | 20 | 160 | Alberta Railway and |
| | All | 1 | 6 | 19 | 640 | Irrigation |
| | All | 2 | 6 | 19 | 640 | Company |
| | All | 3 | 6 | 19 | 640 | and the |
| | East half | 4 | 6 | 19 | 320 | Canadian Pacific Railway |
| 20 | All | 10 | 6 | 19 | 640 | Company |
| | All | 11 | 6 | 19 | 634.9 | <i>continued</i> |
| | All | 12 | 6 | 19 | 624.86 | |
| | All West of the 4th Meridian | | | | 8718.56 | |

Please issue Transfers to us for these as soon as possible as the purchasers are anxious to get Title from us.

Thanking you for your usual prompt attention, we are,

Respectfully yours,

DICT. JWE
30 FH

KNIGHT SUGAR CO. LTD.
per "J. W. Evans"

KNIGHT SUGAR CO.
Limited.

RAYMOND, Alberta. Jan. 20th 1913.

Messrs. Canadian Pacific Railway Co.,
Department of Natural Resources,
Calgary, Alta.

Gentlemen:

We have your favor of the 31st ult and hereby acknowledge receipt of the 11 transfers therein mentioned.

40 Thanking you for same, we are,

Yours truly,

JWE|CM.

Knight Sugar Company Ltd.
Per "J. W. Evans"

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

Series of
Letters
passing
between the
Knight
Sugar
Company
Limited
and The
Alberta
Railway
and
Irrigation
Company
and the
Canadian
Pacific
Railway
Company

continued

KNIGHT SUGAR CO.
Limited.

RAYMOND, Alberta.

Feb. 7th, 1913.

Re. Transfers

Messrs. Canadian Pacific Railway Co.,
Department of Natural Resources,
Calgary, Alta.

Gentlemen:

This will acknowledge the three TRANSFERS which came to us 10
with your letter of the 22nd. ult.

Yours truly,

Knight Sugar Co. Ltd.

Per "J. W. Evans"

Dict. JWE.

KNIGHT SUGAR CO.
Limited.

RAYMOND, Alberta. July 10th. 1913.

RE TITLES FOR 2-19 & 2-21.

Messrs. Canadian Pacific Railway Co.,
Department of Natural Resources,
Calgary, Alberta.

20

Gentlemen:

We have written you several times regarding the Transfers to Town-
ship two (2) Range Nineteen (19) (North of River) and Township two
(2) Range twenty one (21) (North of River) and explained to you that
the Land Titles Office at Calgary would not accept the transfers you first
sent and which were returned to you last March because the acreage in
your transfer did not agree with the latest survey as shown by Plan
dated May 17th 1909 for 2-19 and by Plan of 2-21 dated June 3d. 1909,
signed by E. Deville Surveyor General.

30

The acreage in these plans has been carefully checked and below is
a list of the land for which we should receive transfers from you.

| | | | | |
|--------------------|---------|-----------|--------------------|----------|
| S.W. $\frac{1}{4}$ | 17-2-19 | 160 acres | All section 30 | 640 |
| All | 18 | 640 | All 31, 32, 33, 34 | 2560 |
| " | 19 | 640 | All 35 and 36 | 1280 |
| N.E. $\frac{1}{4}$ | 22 | 160 | N. $\frac{1}{2}$ | 7 235.3 |
| All | 23 | 640 | N.W. $\frac{1}{4}$ | 13 3.6 |
| N. $\frac{1}{2}$ | 24 | 320 | N. $\frac{1}{2}$ | 14 196.2 |
| All | 25 | 640 | N.E. $\frac{1}{4}$ | 15 46.1 |
| N.E. $\frac{1}{4}$ | 26 | 160 | N. $\frac{1}{2}$ | 17 260.1 |

40

| | | | | | | |
|-----------------------------|---------|-----------|---------------------------------------|----|---------------|--|
| All | 27 | 640 acres | All | 20 | 454.1 | <i>In the Supreme Court of Alberta</i> |
| All | 28 | 640 | W. $\frac{1}{2}$ & E. $\frac{1}{2}$ | 21 | 290.4 | |
| All | 29 | 640 | W. $\frac{1}{2}$ & S.E. $\frac{1}{4}$ | 22 | 325.3 | |
| | | | S. $\frac{1}{2}$ | 24 | 234.5 | |
| TOTAL | | | | | 11761.6 acres | Exhibits and Documents. |
| | | | | | | No. 19 |
| N. $\frac{1}{2}$ of section | 5-2-21 | | | | 318.4 acres | Series of Letters passing between the Knight Sugar Company Limited and The Alberta Railway and Irrigation Company and the Canadian Pacific Railway Company |
| N.E. $\frac{1}{4}$ of | 6-2-21 | | | | 160 | |
| W. $\frac{1}{2}$ | 6-2-21 | | | | 320 | |
| All | 7-2-21 | | | | 640 | |
| 10 All | 9-2-21 | | | | 640 | |
| All | 16-2-21 | | | | 640 | |
| All | 17-2-21 | | | | 640 | |
| All | 18-2-21 | | | | 640 | |
| All | 19-2-21 | | | | 638 | |
| All | 20-2-21 | | | | 636 | |
| All | 21-2-21 | | | | 640 | |
| All | 24-2-21 | | | | 640 | |
| All | 25-2-21 | | | | 636 | |
| All | 28-2-21 | | | | 640 | |
| 20 All | 29-2-21 | | | | 636 | |
| All | 30-2-21 | | | | 636 | |
| E. $\frac{1}{2}$ of section | 31-2-21 | | | | 318 | |
| All | 32-2-21 | | | | 636 | |
| All | 33-2-21 | | | | 636 | |
| All | 36-2-21 | | | | 638 | |
| N. $\frac{1}{2}$ of | 4-2-21 | | | | 189 | " |
| S.W. $\frac{1}{4}$ of | 4-2-21 | | | | 14.9 | |
| S. half | 5-2-21 | | | | 77.9 | |
| S.E. $\frac{1}{4}$ of | 6-2-21 | | | | 142.7 | |
| 30 N. half | 13-2-21 | | | | 226.7 | |
| S.W. $\frac{1}{4}$ section | 13-2-21 | | | | 69.4 | |
| West half | 31-2-21 | | | | 238 | |
| TOTAL | | | | | 12227.00 | " |

Trusting you will favor us with transfers at once as we are obligated to deliver Titles to our clients, we are,

Yours truly,

DICT.JWE.
FHW

KNIGHT SUGAR CO. LTD.
per "J. W. Evans"

No. 20.

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 20.

Three
Letters
from
Registrar,
South
Alberta
Land
Registration
District
to Knight
Sugar
Company,
C. E.
Hancock
and
Ballachey
& Burnet.

**Three Letters from Registrar, South Alberta Land Registration District
to Knight Sugar Company, C. E. Hancock and Ballachey & Burnet.
(Plaintiff's Documents).**

SOUTH ALBERTA LAND REGISTRATION DISTRICT

Land Titles Office

Calgary, Alberta,

December 27th, 1916.

Dear Sirs,—

N.W. 30-5-20-4

10

With reference to your letter of the 11th instant, I return herewith Transfer "Knight Sugar Company Limited to Green" and would ask you to have the mineral reservations amended to read:—

"Reserving unto His Majesty all coal,
"and unto the Alberta Railway and Irrigation
"Company all other minerals".

There will be \$80.00 unearned increment tax, being on the difference between the present sworn value of the land, \$4,000, and \$2400.00, the first taxable value for unearned increment purposes.

Yours truly,

20

Knight Sugar Company Limited,
Raymond, Alberta.

"Wilford Forbes"
Registrar.

SOUTH ALBERTA LAND REGISTRATION DISTRICT
LAND TITLES OFFICE

Calgary, Alberta,

March 15th, 1917.

Dear Sir,—

Part Section 9-6-20-4

With reference to your letter of the 12th instant, I return herewith Transfer "Knight Sugar Company Limited to Hancock" that you may have a more exact description of the land set out, and have the mineral reservations amended to read:—

"Reserving unto His Majesty all coal,
"and unto the Alberta Railway and Irrigation
"Company all other minerals".

30

The fee for registration will be \$6.20, plus unearned increment tax of \$12.30, this being 5% on the difference between the present sworn value of the land, \$584.85, and \$338.40, the first taxable value for unearned increment purposes.

C. E. Hancock, Esq.,
Raymond, Alberta.

Yours truly,
"Wilford Forbes"
Registrar.

SOUTH ALBERTA LAND REGISTRATION DISTRICT
Land Titles Office

10

Calgary, Alberta,
March 20th, 1917.

Dear Sirs,—

W. ½ 33-5-20-4

With reference to your letter of the 27th instant, I return herewith Transfer "Knight Sugar Company Limited to Thompson, et al" and would ask you to have the mineral reservations amended to read:—

"Reserving unto His Majesty all coal,
"and unto the Alberta Railway and Irrigation
"Company all other minerals".

20

Messrs. Ballachey & Burnet,
Barristers, &c.,
High River,
Alberta.

Yours truly,
"Wilford Forbes"
Registrar.

*In the
Supreme
Court of
Alberta*

Exhibits
and
Documents.

No. 20.

Three
Letters
from
Registrar,
South
Alberta
Land
Registration
District
to Knight
Sugar
Company,
C. E.
Hancock
and
Ballachey
& Burnet.

continued

PART I. (Continued).

No. 9.

JUDGMENT OF THE HONOURABLE MR. JUSTICE FORD.

The material facts of this case are as follows:

By an agreement in writing made on the 25th day of November, 1903, the predecessor in title of the defendant agreed to sell to the plaintiff and the plaintiff agreed to purchase some 223,124.89 acres of land more or less, situated in what is now the Province of Alberta, for the price and on the terms set out in the Articles of Agreement, Exhibit 3, which contained a covenant, by the vendor, binding on the defendant, to convey the land on payment of the purchase price "by good and sufficient deed in fee simple free and discharged from all encumbrances but subject to the conditions and reservations expressed in the original grant thereof from the Crown."

The Crown grants contained the following exception and reservation: "Saving, excepting and reserving unto Us, Our successors and assigns, all coal mines, coal pits, seams and veins of coal, as well open as not open, which shall or may be wrought, found out or discovered or which may exist within, upon or under the said lands, together with full power to work the same and for this purpose to enter upon and use and occupy the said lands or so much thereof and to such an extent as may be necessary for the effectual working of the said mines, seams and veins."

Although the agreement provided for the payment of the purchase price of \$446,249.78 by a cash payment of \$53,082.84 and nine equal consecutive annual payments, the first of which was to be paid on the First of September, 1904, and the covenant for title provided for the transfer of the title to the land on payment of the purchase price and interest, transfers were from time to time made of portions thereof. Some of the transfers were made to the plaintiffs and some to its nominees to whom it had from time to time agreed to sell certain parcels of the land.

By the 20th of December, 1912, payment in full of the purchase money had been made.

As stated in paragraph 11 of the plaintiff's statement of claim; "the defendant pursuant to the agreements (the plural being used because of a reference to an agreement prior to that of November 25, 1903, which now has no material bearing upon the issues involved) hereinbefore referred to, made, drew, wrote, prepared, executed and subsequently delivered to the plaintiff transfers under the Land Titles Act of the Province of Alberta, under and by which it transferred to the plaintiff all the defendant's estate and interest in the said lands, (with the exception of certain portions thereof, title to which the defendant did not acquire). 'Excepting therefrom all coal and other minerals in and under the said land, and the right to use so much of said land or the surface thereof as the company

may consider necessary for the purpose of working and removing the said coal and minerals, and any portion of said lands heretofore taken for roads or public purposes.'”

By the 12th of March 1913, all the transfers had been registered by the plaintiff or its nominees and certificates of title in pursuance thereof issued by the Registrar.

10 The plaintiff's pleading and the evidence, as well as all the circumstances surrounding the granting and acceptance of the transfers, justify the finding as matter of fact, and not simply as a conclusion of law, that the real completed contract between the parties is to be found in the transfers and that the rights of the parties depend upon the proper construction of the terms thereof. Even assuming, as I do, that under the agreement of November 1903 the plaintiff became the equitable owner of the land with the one exception from its ownership, of coal and the right to work it, and that the circumstances surrounding the sale do not admit of any other exception from or limitation of its equitable title, I cannot accept the view that the transfers are to be treated as merely a partial carrying out of the agreement, leaving it open to the plaintiff at some indefinite period, and indeed at any time not covered by some statute of

20 limitations, to call for a conveyance of something not granted thereby, because, as it is said, there is no evidence of a release of or an agreement to part with a portion of what on this assumption was equitably owned by it.

From as early at least as the beginning of the year 1918 and up to at least as late as January 1925, the plaintiff from time to time acted upon the suggestion of the Registrar of Land Titles that the proper reservation to be included in the transfers from the plaintiff of portions of the lands in question to its purchasers, should, as they all were made to, read: “Reserving unto His Majesty all coal and unto the Alberta Railway and Irrigation

30 Company all other minerals.”

It is I think of no importance but I recite the fact that the form of agreement, used by the plaintiff in connection with sales by it, made its covenant for title “subject to the reservations, conditions and provisoes contained in the original grant from the Crown.”

The afterthought which gives rise to this action was conceived when the gentleman who had been accountant of the plaintiff from February 1913, referred in the year 1930 to an agreement of July 19, 1901, which had preceded that of November 25, 1903, and, as he says in his examination for discovery, saw that the plaintiff had bought the land without any

40 reservations as to minerals. So far as the lands in question in this action are concerned the agreement to which the accountant referred was only an agreement to enter into an agreement if certain conditions were fulfilled.

Following the accountant's discovery a notice (Exhibit 18), dated the 29th of July, A.D. 1930, was delivered to the defendant in which the plaintiff demanded a transfer of “all the mines and minerals excepting

*In the
Supreme
Court of
Alberta*

No. 9

Reasons
for
Judgment
12th
September
1935.

continued

*In the
Supreme
Court of
Alberta*

No. 9.

Reasons
for
Judgment
12th
September
1935.

continued

coal in and to all the lands mentioned in and described as parcel 2 in the said agreement, dated July 19th, 1901." It will be noticed that the demand then made is for a transfer of something not theretofore transferred and is an entirely different claim from that now set up on the plaintiff's behalf.

I am at a loss to know why reference was not made to, and the notice based upon, the agreement of November 25th, 1903, as the demand, if sound at all, would have been justified as much, if not more, under the latter as the former.

It was admitted at the hearing, for the purposes of this action, as a matter of fact, that, at all times material to the matters involved in this action, petroleum and natural gas came within the definition of "minerals." 10

The plaintiff asks for:

1. A declaration that the plaintiff, under the agreements referred to in the statement of claim and on the registration of the transfers of the lands in question became the owner of and entitled to all mines and minerals other than coal and precious metals, and the right to work and win the same.
2. In the alternative a declaration that the plaintiff is the owner of and entitled to the petroleum and natural gas rights in and under the lands described in the agreement of the 25th of November, 1903. 20
3. An account of all mines and minerals alienated by the defendant of which the plaintiff claims to be the owner.
4. Judgment for the value of the mines and minerals so alienated.

No claim is made for rectification of the transfers.

Mr. Sinclair in his opening and in his argument at the close of the hearing, stated that he appreciated that if he cannot succeed upon the proper construction to be placed upon the title his client got under the transfers and certificates of title his claim fails, because, as he put it, I am bound to follow the decision in *Hansen v. Franz* 57 S.C.R. 57, and to take the law to be that "the executory agreement of 1903 is merged in the title." He, however, urged me strongly to hold that the words of the exception in the grant, construed in the light of the agreement of 1903, except coal only from the grant or at most coal and "minerals of like kind." 30

I adhere to the view that I was right in admitting in evidence the agreement of November 25th, 1903, but the use for which it can be used is quite another matter. It cannot, I think, be used in support of the claim that all minerals other than coal and precious metals, passed to the plaintiff on the registration of the transfers. As stated by Paterson J. in *Williams vs. Morgan* 15 Q.B. 782; 117 E.R. 654, "for the purpose of shewing what passed by the subsequent deed, the preliminary agreement can never be admissible." Wightman J. in the same case said: "I should have hesitated before assenting to the abstract proposition, that a preliminary agree- 40

ment can never be admissible in evidence if there has been a subsequent contract carrying it out. The agreement may, under special circumstances and for particular objects, be evidence. My brother Paterson has pointed out some such objects; and there may be more. But in the present case the agreement was put in to show what was purchased; and it is clear to my mind that it was not admissible for that purpose I am clearly of the opinion that, for the purpose of showing what was conveyed, the agreement was not evidence, because it was merged in the conveyance."

*In the
Supreme
Court of
Alberta*

No. 9

Reasons
for
Judgment
12th
September
1935.

10 For the purpose of finding out what was meant by or included in the words "other minerals," and especially for the purpose of supporting the suggestion that petroleum and natural gas were not included in the exception in the transfers, the agreement can be made use of, if it contains anything which would assist in that inquiry.

continued

The rule to be followed is that laid down by Tindal C.J., in *Shore v. Wilson* 9 Cl. & F. 355; 8 E.R. 450, and recently re-stated by Lord Blanesburgh in *Tsang Chuen v. Li Po Kwai* (1932) A.C. 715 at p. 727, as follows:

20 "The general rule, I take to be, that where the words of any written instrument are free from ambiguity in themselves, and where external circumstances do not create any doubt or difficulty as to the proper application of those words to claimants under the instrument, or the subject matter to which the instrument relates, such instrument is always to be construed according to the strict, plain, common meaning of the words themselves; and that in such case evidence dehors the instrument for the purpose of explaining it according to the surmised or alleged intention of the parties to the instrument, is utterly inadmissible."

30 Here no aid to the construction of the exception is to be found in either of the agreements antecedent to the transfers. To say that the construction to be placed upon the words "coal and other minerals" requires me to hold that coal only was excepted, is to say that no meaning is to be given to the words "other minerals"; and to give effect to the alternative construction that the exception should be construed as if it read "coal and other minerals of like kind," is to push the ejusdem generis doctrine, even if applicable, beyond its true scope.

40 In this connection I should add that whether or not the decision in *Hansen v. Franz* is as strongly against the plaintiff as Mr. Sinclair invites me to assume, a speculation upon which I refrain from entering, I am inclined to the view that the case of *Carroll v. Provincial Natural Gas & Fuel Co. of Ont.* 26 S.C.R. 181, so strongly relied upon by Mr. Smith for the defendant, is not necessarily indistinguishable from the present case. In that case a reservation contained in the agreement antecedent to the deed was omitted from the latter and it was held that "to withhold any part of that which it professes to convey we should be simply violating that fundamental rule of the law of property which forbids a grantor from derogating from his own grant." In the present case the exception contained in

the transfers is one which the grantor would not have been entitled to make except by agreement or as the result of the rectification of the agreement for sale.

The language of Strong C.J., at p. 191, is, however, very appropriate here. That learned Judge said: "There is no hardship in this construction for either the reservation was omitted from the deed by error and mistake or it was intentionally so omitted. If there was a mistake a plain simple remedy was open to the appellants, namely: an action in the nature of a bill in equity for rectification, but this remedy they have not thought fit to resort to. On the other hand it was quite competent to the parties to alter their contract in the time which intervened between the contract and the conveyance, and were we to concede the relief prayed by the appellants we should be assuming not only without evidence but against evidence that they had not done so, a very dangerous and unwarranted course to adopt."

At p. 188 Strong C.J., quotes with approval also the language of James L.J. in *Leggott v. Barrett* 15 Ch. D. 306, as follows:

"I cannot help saying that I think it is very important, according to my view of the law of contracts both at common law and in equity, that if parties have made an executory contract which is to be carried out by a deed afterwards executed, the real completed contract between the parties is to be found in the deed, and that you have no right whatever to look at the contract although it is recited in the deed, except for the purpose of construing the deed itself. You have no right to look at the contract either for the purpose of enlarging or diminishing or modifying the contract which is to be found in the deed itself."

Counsel for the plaintiff, while willing to confine the claim to the alternative declaration, claims that the plaintiff is entitled to be declared to be the owner of all minerals and mineral rights which were covered by the defendant's title to the land at the time the agreement for sale was entered into.

I am clearly of the opinion that, even without the plaintiff's admission made at the hearing, petroleum and natural gas are to be classed as "minerals" and that, if the words "other minerals," in the exception in the grant, are to be given their usual and ordinary meaning petroleum and natural gas are excepted from the grant. There is nothing in the decision in *Barnard-Argue-Roth-Stears Oil and Gas Company v. Farquharson* (1912) A.C. 864, against this view but on the contrary a good deal to support it.

The plaintiff, in my opinion, is not helped by the fact that the specific mineral "coal" is expressly mentioned, preceding the general words "other minerals," because here there was a reason for its use, which appears to me to be an obvious one, viz., that the coal had been reserved to the Crown and it was probably thought desirable to expressly mention it, although, of course, the exception might have been expressed as "all minerals except coal."

I think the ejusdem generis doctrine has no application here and that the general words "other minerals" must be taken to include all minerals which at the date of the grants were owned by the grantor. Whether or not it is necessary to the application of the rule that there should be at least two illustrations of particular instances, or whether the general characteristic which may govern or cover the general words may be discovered from one illustration, is a question upon which I think it unnecessary to express an opinion. Here the general words "other minerals" must be regarded as having a wider ambit than is covered by or to be found in the word "coal." In this connection reference may be made to *Stoomvaart Maatschappij Sophie H. v. Merchants Marine Ins. Co.* 89 L.J. K.B. 834, and to *Stag Line Ltd., v. Foscolo Mango & Co.* (1932) A.C. 328.

*In the
Supreme
Court of
Alberta*

No. 9

Reasons
for
Judgment
12th
September
1935.

continued

If, however, the ejusdem generis doctrine is to be applied I am clearly of the opinion on the evidence that petroleum and natural gas come within the exception or reservation, whatever view of the purport of the rule is the true one. In this connection reference may usefully be made to the discussion of the doctrine by Duff J. (now C.J.) in *Ferguson v. Maclean* (1930) S.C.R. 630, commencing at p. 652, and to *Stag Line Ltd. v. Foscolo Mango & Co.* (supra), especially at p. 334.

20 My appreciation of Dr. Allen's evidence leads me to the conclusion that petroleum and natural gas are "minerals" of "like kind" with coal and come within some such general "category" and have such similar "characteristics" as coal that they cannot be excluded from the exception however far the ejusdem generis doctrine may be pushed.

Bearing in mind that the words "other minerals" are "susceptible of limitation or expansion according to the intention with which they are used" (Lord Provost etc., of *Glasgow v. Farie* 13 A.C. 657, Lord Watson at p. 675, referred to in *Barnard etc., v. Farquharson* (supra) by Lord Atkinson at p. 869), I should add, although not absolutely necessary to a decision of the case before me, that the evidence of the plaintiff's acceptance of the Registrar's interpretation of the exception comes within the principle of *Watcham v. Attorney General of the East Africa Protectorate* (1919) A.C. 533. Complying with Lord Chancellor Sugden's cryptic phrase in *Attorney General v. Drummond & Dr. & War.* 353, 368 "tell me what you have done under such a deed, and I will tell you what that deed means," the defendant puts forward evidence of the plaintiff's acts following its acceptance of the Registrar's interpretation of the exception as having the effect of "reserving unto His Majesty all coal and unto the Alberta Railway and Irrigation Co. all other minerals." This view according to the plaintiff's pleading, which alleges that the defendant has alienated some of the "mines and minerals," seems to have been that acted upon also by the defendant. It is not, in my view a sufficient objection or answer to the application of the principle to say, as Mr. Sinclair argues, that the acts relied upon are not the acts of the parties, or of the plaintiff, but the acts of the

*In the
Supreme
Court of
Alberta*

No. 9.

Reasons
for
Judgment
12th
September
1935.

continued

Registrar. The plaintiff need not have adopted the Registrar's view of the state of the title as showing the ownership of the minerals other than coal in the defendant. If the plaintiff had thought it owned, and had agreed to sell to its purchasers, the land with all minerals and mineral rights other than coal it could, and I think should have, at once taken proceedings to have the exception in the transfers interpreted by the Court or, better still, to have the transfers rectified to conform to the agreement.

The decision of the House of Lords in *North Eastern Railway v. Hastings* (1900) A.C. 260, does not exclude the application of the principle of the *Watcham* case; and if the proper view is that there is no ambiguity in the words "coal and other minerals." arising from the intrinsic or extrinsic circumstances, that decision is a strong authority against the view that the transfers are to be controlled by the preliminary agreement. 10

Judgment may go dismissing the action with costs to be taxed under double Column 5, including the costs of the examinations for discovery.

"FRANK FORD"

Edmonton, September 12th, 1935.

J.

No. 10.

Formal
Judgment
13th
September
1935.

No. 10.

JUDGMENT ROLL

DATED the 13th day of September, A.D. 1935.

20

This action having come on for trial on Wednesday and Thursday, the 26th and 27th days of June, 1935, respectively, before the Honourable Mr. Justice Ford, at the sittings holden at the City of Calgary, in the Province of Alberta, for trial of actions without a jury, in the presence of Counsel for both parties.

UPON hearing read the pleadings and hearing the evidence adduced and what was alleged by Counsel aforesaid this Court was pleased to direct that this action should stand over for judgment and the same coming on this day for judgment.

IT IS ADJUDGED that this action be and the same is hereby dismissed. 30

AND IT IS FURTHER ADJUDGED that the Defendant do recover from the Plaintiff its costs of this action, such costs to be taxed on Double Column 5, including costs of Examination for Discovery.

Approved as to form:
"Sinclair & Walsh"
per L.A.W.

"V. R. JONES,"
C.S.C.

(Seal)

Entered this 30th day of September,
1935.

(Seal) V. R. JONES,
Clerk of the Court.

40

NOTICE OF APPEAL

*In the
Supreme
Court of
Alberta*

TAKE NOTICE that the Plaintiff intends to appeal and hereby appeals to the Supreme Court of Alberta, Appellate Division, from the Judgment of the Honourable Mr. Justice Ford, pronounced on the 12th day of September, A.D. 1935, and entered on the 30th day of September, A.D. 1935, on the following amongst other grounds:

No. 11.

Notice of
Appeal
21st
October
1935.

THE LEARNED TRIAL JUDGE ERRED:

- 10 1. In finding that the real completed Contract between the parties is to be found in the Transfers, and that the rights of the parties depend upon the proper construction of the terms thereof.
2. In not holding that the Transfers are to be treated as merely a partial carrying out of the Agreement, leaving it open to the Plaintiff to call for a conveyance of something not granted thereby,
3. In holding that the Agreement of November 25th, 1903, cannot be used in support of the claim that all minerals other than coal and precious metals passed to the Plaintiff on the registration of the Transfers.
- 20 4. In holding that the Agreement of November 25th, 1903, was not admissible in evidence to show what was purchased because it was merged in the conveyance.
5. In holding that no aid to the construction of the exception is to be found in either of the Agreements antecedent to the Transfers.
6. In holding that the Plaintiff is not helped by the fact that the specific mineral "coal" is expressly mentioned preceding the general words "other minerals."
7. In holding that the ejusdem generis doctrine has no application here, and that the general words "other minerals" must be taken to include all minerals which at the date of the Grant were owned by the Grantor.
- 30 8. In holding that the general words "other minerals" must be regarded as having a wider ambit than is covered by or to be found in the word "coal."
9. In holding that if the ejusdem generis doctrine is to be applied, that petroleum and natural gas come within the exception of the reservation, whatever view of the purport of the Rule is the true one.
- 40 10. In finding that petroleum and natural gas were "minerals" of "like kind" with coal, and come within some such general "category" and have such similar "characteristics" as coal that they cannot be excluded from the exception however far the ejusdem generis doctrine may be pushed.

*In the
Supreme
Court of
Alberta*

No. 11.

Notice of
Appeal
21st
October
1935.

continued

11. In holding that the evidence of the Plaintiff's acceptance of the Registrar's interpretation of the exception comes within the principle of *Watcham v. Attorney General of the East Africa Protectorate* (1919) A.C. 533, or in any way affects the interpretation of the documents in question.
12. In not holding that the Transfers must be construed according to the intention of the parties as disclosed by the evidence.

AND TAKE NOTICE that the Plaintiff will move at the Sittings of the said Appellate Division to be holden at the City of Calgary, commencing on the 25th day of November, A.D. 1935, that the Judgment appealed from be reversed and the Plaintiff's action allowed with costs. 10

DATED at the City of Calgary, in the Province of Alberta, this 21st day of October, A.D. 1935.

TO:

J. A. McCaig, Esq.,
Dept. of Natural Resources,
Calgary, Alberta.
Solicitor for the Defendant.

A. MACLEOD SINCLAIR & WALSH

Per

Agents for David Horton Elton,
Solicitor for the Plaintiff.

20

AGREEMENT AS TO CONTENTS OF APPEAL BOOK

*In the
Supreme
Court of
Alberta*

No. 12.

Agreement
as to
Contents of
Appeal
Book
28th
December
1935.

IT IS AGREED that the contents of the Appeal Book on the Appeal to the Appellate Division of the Supreme Court of Alberta, from the Judgment of the Honourable Mr. Justice Ford of the Trial Division, shall be as follows:

1. Amended Statement of Claim.
2. Statement of Defence.
- 10 3. The Evidence taken and all proceedings at the Trial, including those portions of the Examinations for Discovery that were placed in evidence at the Trial.
4. The following Exhibits:
 - 1; 2 omitting the Affidavit of Execution; 3 omitting the description of property; 4; 5; 6 omitting the Affidavits of Value and Execution; 7 omitting back of document; 8 omitting signatures and Affidavits; 9; 10 omitting backs and Affidavits of Value and Execution; 11 omitting backs and Affidavits of Value and Execution; 12; 13 omitting back and Affidavits of Value and Execution; 14 omitting back and Affidavits of Value and Execution; 15 omitting back and Affidavits of Value and Execution; 16 omitting back and Affidavits of Value and Execution; 17 omitting back and Affidavits of Value and Execution; 18 omitting Plan attached thereto; 19 and 20.
- 20 5. Reasons of Judgment of the Learned Trial Judge.
6. Formal Judgment.
7. Notice of Appeal.
8. This Agreement.
9. Clerk's Certificate.

30 DATED at the City of Calgary, in the Province of Alberta, this 28th day of December, A.D. 1935.

James McCaig,
Solicitor for the Defendant.
(Respondent).

A. MACLEOD SINCLAIR & WALSH,
Per L. A. Walsh
Agents for David Horton Elton,
Solicitor for the Plaintiff.
(Appellant).

*In the
Supreme
Court of
Alberta*

No. 13.

CLERK'S CERTIFICATE

No. 13.

Clerk's
Certificate

I, the undersigned Clerk of the Supreme Court of Alberta, in and for the Judicial District of Calgary, hereby certify to the Registrar of the said Court that the foregoing document is a true copy of the Statement of Claim, and Defence, and the pleadings in this cause, the Evidence as furnished me by the Court Stenographer, the Judgment and the Reasons given therefor, and Notice of Appeal to the Court filed with me: that this action was commenced in this Court on the 3rd day of July, A.D. 1933; that this Appeal Book has been approved by the Solicitors; that the Appellant filed 10 the said Notice on the 21st day of October, A.D. 1935.

DATED the 29th day of January, A.D. 1936.

"V. R. JONES"

Clerk of the Supreme Court.
J.D.C.

JUDGMENT

of the Honourable, the Chief Justice.

10 In 1903 the defendant by agreement in writing sold to the Plaintiff a large parcel of land comprising more than 200,000 acres and covenanted, that it would on payment of the purchase price "convey and assure or cause to be conveyed and assured to the said purchaser its successors or assigns". . . . the said lands "together with the appurtenances thereto be-
 10 longing or appertaining, freed and discharged from all encumbrances, but subject to the conditions and reservations expressed in the original grant thereof from the Crown". The Crown grant contained a reservation of all coal mines &c., and the right to work the same but of no other minerals.

By 1913 the plaintiff had paid the full purchase price and the defendant had transferred to it or to its nominees all the lands.

In the transfers and in the Certificates of Title issued thereon there was excepted "all coal and other minerals".

20 In 1930 the plaintiff appeared to awake to the fact that the exception in the transfers did not correspond with the exception in the agreement and it made a demand on the defendant to convey to it the minerals other than coal which had been withheld from it in the transfers. This the defendant refused to do and in 1933 the plaintiff brought action against the defendant in which it prayed, not for a conveyance which it had demanded, but for a declaration that by virtue of the agreement "and on the registration of the transfers" it "became the owner of and entitled to all mines and minerals other than coal and precious metals" or in the alternative "to the Petroleum and Natural Gas rights". The action was tried by Mr. Justice Ford without a jury and was dismissed. Hence the appeal.

30 The argument is that the word "minerals" is an elastic term and should receive a restricted meaning in the term "coal and other minerals" in the transfer. Now it is apparent that no meaning whatever could be given to it if effect were to be given to the first prayer of the claim but it is said that under the ejusdem generis rule or that expressed in the term noscitur a sociis which it is contended has a wider connotation the term should be held to exclude petroleum and gas which it is admitted are minerals but which are so unlike coal the only mineral specified as not to be within the contemplation of the term "other minerals".

40 Whether there is any difference or not in the two expressions of the rule, the application in both cases is for the purpose of restricting the ordinary meaning of a general description by reference to special clauses with which it is associated. There must be a genus or general class within which species, or special classes, specified are comprised and a general term used in connection with the special classes may be restricted to such species of the genus as have such qualities of the general class as are com-

mon to the special classes mentioned or specified. The rule is, of course, applied only for the purpose of carrying out the intention of the parties and, therefore, only when it appears that the intention of the parties was that it was to have a restricted and not an unrestricted meaning. Now if we can look at the agreement itself to ascertain the meaning it certainly gives no support to the plaintiff's argument for it excepts, of minerals, coal and, coal only.

There is no other evidence of any intention to use the term in any restricted sense. Moreover there seems no possibility of applying the rule for only one mineral is named and when one attempts to decide what other minerals are like or unlike it one must ask in what respect. Now all minerals must have some common quality, otherwise they would be something other than minerals. Petroleum and gas are unlike coal, it is true, in that it is a solid while they are, one a liquid and the other a gas, and to that extent unlike each other.

They all have one common quality viz: that in combustion they will produce heat. Whether in any case the rule can be applied when only one species is named, there seems no justification for applying any rule here so as to construe the term "other minerals" as meaning other than what it says for the words subsequently used are not so inapt to the obtaining of oil and gas as to be of much significance. Moreover the use of the word "coal" with other minerals instead of simply using the term "all minerals" seems quite reasonable and explainable by the fact that the coal was reserved by the Crown while the other minerals were not. Without considering any other view expressed by the learned trial Judge this seems conclusive of the case against the plaintiff.

Mr. Sinclair attempts, however, to support his claim on the ground that the defendant if it has not conveyed the minerals, other than coal, to the plaintiff has not fully performed its agreement.

While this is what the plaintiff requested the defendant to do it is not the issue raised in the Pleadings and cannot be considered here. If such an issue were raised it can readily be seen that the evidence might be quite different.

The appeal must be dismissed with costs.

"Horace Harvey"

C.J.A.

Calgary, Feb. 28th, 1936.

I concur

"A. H. Clarke", J.A.

"H. W. Lunney", J.A.

"A. F. Ewing" ad hoc

"A. A. McGillivray", J.A.

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FORMAL JUDGMENT OF THE APPELLATE DIVISION

At the Court House in the City of Calgary, Alberta, Friday, the 28th day of February, 1936.

Formal
Judgment
of the
Appellate
Division,
28th
February,
1936.

PRESENT:

THE HONOURABLE HORACE HARVEY, Chief Justice of Alberta.

10 THE HONOURABLE MR. JUSTICE CLARKE.
THE HONOURABLE MR. JUSTICE LUNNEY.
THE HONOURABLE MR. JUSTICE EWING (ad hoc)
THE HONOURABLE MR. JUSTICE MCGILLIVRAY.

BETWEEN:

KNIGHT SUGAR COMPANY, LIMITED,

Appellant,

—and—

THE ALBERTA RAILWAY AND IRRIGATION COMPANY,
Respondent.

20 The Appeal of the above named Appellant from the Judgment of The Honourable Mr. Justice Ford pronounced in the above cause on the 13th day of September in the year of our Lord 1936, having come on to be heard before this Court on the 27th and 28th days of February, in the year of our Lord 1936, in the presence of Counsel as well for the Appellant as for the Respondent; WHEREUPON and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said Appeal should be dismissed;

IT IS ADJUDGED that the said Appeal be and the same is dismissed, and that the said Judgment of Mr. Justice Ford be and the same is affirmed;

30 AND IT IS FURTHER ADJUDGED that the Respondent do recover from the Appellant the costs incurred by the said Respondent in this Appeal.

V. R. Jones

Registrar at Calgary.

Approved as to form:

A. Macleod Sinclair & Walsh,
Solicitors for the Appellant.

Entered this 3rd day of March, 1936.

40

V. R. JONES

Registrar.

(SEAL)

ORDER GRANTING LEAVE TO APPEAL

Order
Granting
Leave to
Appeal,
28th
February,
1936.

At the Court House in the City of Calgary, Province of Alberta, this 28th
day of February, A.D. 1936.

BEFORE:

THE HONOURABLE HORACE HARVEY, Chief Justice of Al-
berta.

THE HONOURABLE MR. JUSTICE CLARKE.

THE HONOURABLE MR. JUSTICE LUNNEY.

THE HONOURABLE MR. JUSTICE EWING (ad hoc)

THE HONOURABLE MR. JUSTICE MCGILLIVRAY.

10

BETWEEN:

KNIGHT SUGAR COMPANY, LIMITED,

—and—

Plaintiff,
(Appellant)

THE ALBERTA RAILWAY AND IRRIGATION COMPANY,

Defendant,
(Respondent)

UPON THE APPLICATION of the Plaintiff (Appellant) for leave
to appeal from the Judgment of the Supreme Court of Alberta, Appellate
Division, dismissing the Plaintiff's Appeal from the Judgment of the Hon-
ourable Mr. Justice Ford, dismissing the Plaintiff's action with costs,
UPON reading the pleadings and proceedings herein AND UPON hear-
ing Counsel for both parties:

20

IT IS ORDERED that the Plaintiff (Appellant) have leave to appeal
to His Majesty in Council upon the following conditions:

- (a) That the Plaintiff (Appellant), within two months from the date
of this Order, enter into good and sufficient security to the satis-
faction of this Court in the sum of TWO THOUSAND (\$2,-
000.00) DOLLARS, for the due prosecution of the Appeal, and
the payment of all such costs as may become payable to the De-
fendant (Respondent) in the event of the Plaintiff (Appellant)
not obtaining an Order granting it final leave to Appeal, or of the
Appeal being dismissed for non-prosecution, or of His Majesty
in Council ordering the Plaintiff (Appellant) to pay the Defend-
ant's (Respondent's) costs of Appeal.

30

- (b) That the Plaintiff (Appellant), within the period of three months from the date of this Order, take the necessary steps for the purpose of procuring the preparation of the Record and the dispatch thereof to England.

By the Court,

V. R. Jones
Registrar of the Supreme Court
of Alberta, Appellate Division,
at Calgary.

*In the
Supreme
Court of
Alberta*

—
No. 16.

Order
Granting
Leave to
Appeal.
28th
February,
1936.
Continued

10 Approved as to form:

“James McCaig”

Solicitor for Defendant (Respondent).

Entered this 25th day of April, 1936.

V. R. JONES

Registrar at Calgary.

(SEAL)

ORDER GRANTING FINAL LEAVE TO APPEAL

Dated at the Court House, in the City of Calgary, Tuesday, the 13th of
October A.D. 1936.

BEFORE:

THE HONOURABLE HORACE HARVEY, Chief Justice of Al-
berta.

THE HONOURABLE MR. JUSTICE CLARKE.

THE HONOURABLE MR. JUSTICE LUNNEY.

THE HONOURABLE MR. JUSTICE MCGILLIVRAY.

10

BETWEEN:

KNIGHT SUGAR COMPANY, LIMITED,

—and—

Plaintiff,
(Appellant)

THE ALBERTA RAILWAY AND IRRIGATION COMPANY,

Defendant,
(Respondent)

UPON Motion made this day to this Court by Counsel for the Plain-
tiff (Appellant) UPON reading the Order granting Conditional Leave
to Appeal to His Majesty in Council, made on the 29th day of February,
1936, and entered on the 25th of April, 1936, UPON reading the Affidavit
of George H. Taylor, dated the 8th of October, 1936, UPON reading the
Certificate of the Registrar of this Court, dated the 8th of October, 1936,
of compliance with the said Order AND UPON hearing Counsel for
both parties, THIS COURT DOTH ORDER that final Leave to Appeal
to His Majesty in Council, as applied for, be granted to the Plaintiff (Ap-
pellant).

20

THIS COURT DOTH FURTHER ORDER that the Plaintiff (Ap-
pellant) do complete the copying of the said Record and instruct the
Registrar of this Court at Calgary to transmit to the Registrar of the
Privy Council one certified copy of such Record on or before the 31st
day of October, 1936.

30

BY ORDER OF THE COURT. "V. R. JONES"

APPROVED,

A. H. Clarke,
J.A.

Registrar of the Supreme Court of
Alberta, Appellate Division at Cal-
gary. (Seal)

O.K. as to form.

James McCaig,
Solicitor for Defendant,
(Respondent).

Entered this 21st day of October,
1936.

V. R. JONES
Registrar at Calgary. (Seal).

40

In the Privy Council

No. **123.** of 1936.

*On Appeal from the Appellate Division of the
Supreme Court of Alberta.*

Between
KNIGHT SUGAR COMPANY, LIMITED,
(Plaintiff) Appellant
—and—

THE ALBERTA RAILWAY AND
IRRIGATION COMPANY
(Defendant) Respondent

RECORD OF PROCEEDINGS

LAWRENCE JONES & Co.,
Lloyds Building,
Leadenhall Street, E.C. 3.
For the Appellants.

BLAKE & REDDEN,
17, Victoria Street, S.W. 1.
For the Respondents.