THE STANWARD CORPORATION (*Plaintiff*) ..... APPELLANT;

1968 *Feb. 7, 8 Apr. 1

AND

STANROCK URANIUM MINES LIMITED (made a Party Appellant pursuant to Suggestion filed);

AND

DENISON MINES LIMITED (*Defendant*) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Mines and minerals—Owner of mining claims purchasing additional claims —Royalty agreement—Subsequent amalgamation of purchaser with another company—Ore mined from claims formerly belonging to other company—Whether said claims "adjacent" to purchaser's original claims within meaning of that term as used in royalty agreement.

The plaintiff company brought an action to recover royalties claimed by it from D company in respect of uranium ore mined from certain claims pursuant to an agreement dated January 6, 1956. The plaintiff owned a block of 18 mining claims and the CM company owned a block of 14 claims lying immediately to the west of the plaintiff's block of claims. The CD company owned a block of 88 claims lying to the west of the CM claims. The distance between the most easterly claim of the CD block and the most westerly of the CM claims was approximately one-quarter of a mile.

By the agreement of January 6, 1956, the CM company purchased the plaintiff's 18 mining claims for $300,000 cash and 50,000 shares of CM

* PRESENT: Cartwright C.J. and Abbott, Ritchie, Hall and Spence JJ.

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stock. In addition, the agreement contained a royalty clause the meaning of which was that no royalties were to be paid on the first 4,000,000 tons of ore mined from the claims covered by the agreement (*i.e.*, the combined 32 claims and "any other claims which [CM] may acquire adjacent" to its original 14 claims), and that a $1 a ton royalty attached only to the next 750,000 tons mined.

By agreement dated January 4, 1960, CD and CM agreed to amalgamate under the provisions of *The Corporations Act,* 1953 (Ont.), c. 19, and to continue as D company. Up to the date of the amalgamation 1,996,856 tons of ore were mined by CM from the CM block of claims and the plaintiff's block of claims, and after the amalgamation and up to the date of the issue of the writ, February 14, 1962, no further ore was mined from those blocks of claims. Up to the date of the writ, 3,790,870 tons of ore were mined by D from the block of claims which, prior to the amalgamation, belonged to CD and by August 5, 1961, the combined production by CM before amalgamation and by D thereafter had reached a total of 4,750,000 tons. The ore mined after the amalgamation was taken from only 21 of the claims previously owned by CD and of these 21 claims the one which was closest to any of the CM claims was separated from it by a distance of approximately one and a quarter miles.

The basis of the plaintiff's claim was that the claims in the CD block were adjacent to the CM claims and were acquired by CM within the meaning of the royalty agreement. The trial judge dismissed the action and an appeal from his judgment was dismissed by the Court of Appeal. An appeal was then brought to this Court.

Held: The appeal should be dismissed.

As to the defence that the CD claims were not adjacent to the CM claims within the meaning of that term as used in the royalty agreement, the appellant's argument that the question to be decided was not whether the 21 claims from which the ore was actually mined were adjacent to the CM claims but rather whether the whole block of 88 claims should be regarded as so adjacent was rejected.

The Court agreed, as did the Court of Appeal, with the conclusion of the trial judge that the CD claims from which the ore was mined were not adjacent to those set out in the royalty agreement and also with his reasons for reaching that conclusion. *Mayor, etc., of the City of Wellington v. Mayor, etc., of the Borough of Lower Hutt,* [1904] A.C. 773, referred to.

APPEAL from a judgment of the Court of Appeal for Ontario[1], dismissing an appeal from a judgment of Gale C.J.H.C., now C.J.O., whereby an action for royalties on ore mined from certain claims was dismissed. Appeal dismissed.

C. F. H. Carson, Q.C., and *J. R. Houston,* for the plaintiff, appellant.

John J. Robinette, Q.C., and *J. D. Arnup, Q.C.*, for the defendant, respondent.

[1] [1966] 2 O.R. 585, 57 D.L.R. (2d) 674.

The judgment of the Court was delivered by

THE CHIEF JUSTICE:—This is an appeal from a unanimous judgment of the Court of Appeal for Ontario[1] dismissing an appeal from the judgment of Gale C.J.H.C., as he then was, whereby the action of the appellant The Stanward Corporation, hereinafter referred to as "Stanward", was dismissed with costs.

The facts are fully set out in the reasons for judgment of Gale C.J.H.C. and a comparatively brief summary will be sufficient to indicate the reasons for the conclusion at which I have arrived.

The action was brought by Stanward to recover royalties in the amount of $750,000 claimed by it from Denison Mines Limited, hereinafter referred to as "Denison", in respect of uranium ore mined from claims in the Blind River area of the Province of Ontario pursuant to an agreement under seal in the form of a letter dated January 6, 1956, from Stanward, then named Stancan Uranium Corporation, addressed to and accepted by Can-Met Explorations Limited, hereinafter referred to as "Can-Met".

Prior to the execution of this royalty agreement, Stancan owned a block of eighteen mining claims in the Blind River area and Can-Met owned a block of fourteen claims lying immediately to the west of the Stancan block of claims. Another company, Consolidated Denison Mines Limited, hereinafter referred to as "Consolidated Denison", owned a block of eighty-eight claims lying to the west of the Can-Met claims. The distance between the most easterly claim of the Consolidated Denison block and the most westerly of the Can-Met claims was approximately one-quarter of a mile.

All of the three blocks of claims mentioned above lie in part under the waters of Quirke Lake and the same ore body extends through the Consolidated Denison block into the northerly part of the Can-Met and Stancan blocks.

On June 13, 1956, Can-Met entered into a contract with Eldorado Mining and Refining Limited, hereinafter called "Eldorado", a Crown corporation, for the sale of 7,350,000 pounds of uranium oxide. This contract was referred to as the "Initial Contract".

[1] [1966] 2 O.R. 585, 57 D.L.R. (2d) 674.

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By the agreement of January 6, 1956, referred to above, Can-Met purchased the appellant's eighteen mining claims for $300,000 cash and 50,000 shares of Can-Met stock. It is admitted that this cash was paid and the stock issued. There was a further consideration set out in para. 3 of the agreement, which read as follows:

> 3. You '(Can-Met)' shall pay us a royalty equal to $1.00 per ton on each ton of ore mined from the ground covered by any of the claims listed in paragraph numbered 1 above, (the plaintiff's eighteen claims) or any of the claims listed below in this paragraph 3; *provided* that such royalties shall not exceed $750,000 in the aggregate; and *provided further* that such royalties shall not be payable until 4,000,000 tons of ore shall be mined from such claims, or until you shall have fulfilled deliveries of concentrates under your anticipated initial contract with Eldorado Mining and Refining Limited, whichever shall occur sooner:
>
> S.67832—67843, inclusive,
> S.82986,
> S.82987,
> or any other claims which you may acquire adjacent thereto.

The plaintiff's claim rests on the allegation that more than 4,000,000 tons of ore have been mined from the claims referred to in this royalty agreement. It is common ground that the meaning of the royalty clause was that no royalties were to be paid on the first 4,000,000 tons of ore mined from the claims covered by the agreement, and that the $1 a ton royalty attached only to the next 750,000 tons mined.

By agreement dated January 4, 1960, Consolidated Denison and Can-Met agreed to amalgamate, under the provisions of *The Corporations Act,* 1953 (Ont.), c. 19, under the name of Denison Mines Limited.

It is agreed that up to the date of the amalgamation 1,996,856 tons of ore had been mined by Can-Met from the Can-Met block of claims and the Stancan block of claims, that after the amalgamation and up to the date of the issue of the writ no further ore was mined from those blocks of claims and that all the rest of the ore required to fulfill the Initial Contract with Eldorado was mined from the block of claims which, before the amalgamation, belonged to Consolidated Denison. It is also agreed that up to February 14, 1962, the date of the issue of the writ, 3,790,870 tons of ore were mined by Denison from the block of claims which, prior to that amalgamation, belonged to Consolidated Denison and that by August 5, 1961, the

combined production by Can-Met before amalgamation and by Denison thereafter had reached a total of 4,750,000 tons.

The basis of the appellant's claim is that the claims in the Consolidated Denison block were adjacent to the Can-Met claims and were acquired by Can-Met within the meaning of the royalty agreement.

The claim was resisted on three grounds:

1. That the Consolidated Denison claims were not acquired either by Can-Met or by Denison within the meaning of that term as used in the royalty agreement;
2. That the claims from which the ore was mined following the amalgamation were not adjacent to the claims referred to in the royalty agreement within the meaning of that term as used in the agreement;
3. That even if the appellant was otherwise entitled to succeed on its claim, it had lost its right because prior to the amalgamation Can-Met made a proposal in bankruptcy under the *Bankruptcy Act* and Stanward failed to prove its claim in that proceeding although it had notice thereof.

Gale C.J.H.C. was of opinion that the eighty-eight Consolidated Denison claims were acquired by Can-Met or by Denison within the meaning of that term as used in the royalty agreement but that the claims from which the ore was mined were not adjacent to the Can-Met claims and consequently he found it unnecessary to deal with the defence founded on the provisions of the *Bankruptcy Act*.

The unanimous judgment of the Court of Appeal was delivered by Kelly J.A. who held that the Consolidated Denison claims were not acquired by either Can-Met or Denison and that on this ground the action failed. He also expressed his complete agreement with the reasons and conclusion of the learned trial Judge as to the claims from which the ore was mined not being adjacent to the Can-Met claims. Consequently he also refrained from dealing with the defence under the *Bankruptcy Act*.

I find it necessary to deal only with the defence that the Consolidated Denison claims were not adjacent to the Can-Met claims within the meaning of that term as used in the royalty agreement. As already mentioned, the most easterly

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of the Consolidated Denison claims was separated by approximately one-quarter of a mile from the most westerly of the Can-Met claims. The ore mined after the amalgamation was taken from only twenty-one of the claims previously owned by Consolidated Denison and of these twenty-one claims the one which was closest to any of the Can-Met claims was separated from it by a distance of approximately one and a quarter miles.

It was urged for the appellant that the question to be decided on this branch of the matter was not whether the twenty-one claims from which the ore was actually mined were adjacent to the Can-Met claims but rather whether the whole block of eighty-eight claims should be regarded as so adjacent. Gale C.J.H.C. rejected this argument and in my opinion rightly so.

I find myself, as did the Court of Appeal, in full agreement with the conclusion of Gale C.J.H.C. that the Consolidated Denison claims from which the ore was mined were not adjacent to those set out in the royalty agreement and also with his reasons for reaching that conclusion.

If I had been doubtful in the matter it would still have been my opinion that no sufficient ground has been shown to enable us to differ from the conclusion of Gale C.J.H.C. confirmed, as it has been, by the Court of Appeal. It appears to me that a passage in the judgment of the Judicial Committee in *Mayor, etc., of the City of Wellington v. Mayor, etc., of the Burrough of Lower Hutt*[2] is apposite. That case turned on the meaning of the word "adjacent" as used in a statute. After stating that the word is not one to which a precise and uniform meaning is attached by ordinary usage and that it is entirely a question of circumstances what degree of proximity would justify the application of the word, Sir Arthur Wilson, at p. 776, continued:

> . . . It is enough for the decision of this appeal to say that their Lordships could not properly advise His Majesty to interfere with the decision appealed against unless they were clearly satisfied that the view of the majority of the learned judges as to the meaning of the section and its application to the present case was wrong, and they are far from being so satisfied.

This applies *a fortiori* when, as in the case at bar, the Courts below have been unanimous.

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2 [1904] A.C. 773.

I do not find it necessary to have resort to the maxim, *Verba chartarum fortius accipiuntur contra proferentem* (Co. Litt. 36 a), but it does appear that the royalty agreement was prepared by the advisers of the appellant.

For these reasons I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the plaintiff, appellant: Cassels, Brock, Des Brisay, Guthrie & Genest, Toronto.

Solicitors for the defendant, respondent: Fraser, Beatty, Tucker, McIntosh & Stewart, Toronto.