THE DOME OIL COMPANY (DEFENDANTS) ..... } APPELLANTS;

AND

THE ALBERTA DRILLING COMPANY (PLAINTIFFS) ..... } RESPONDENTS.

1915
*Oct. 25.

1916
*Feb. 1.

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

Mining company—Corporate powers—"Digging for minerals"—Drilling oil wells—Carrying on operations—Becoming contractors for such works.

A mining company incorporated under the "Companies Ordinance," ch. 61, N.-W. Terr. Con. Ord., 1905, and certified, according to section 16 of the ordinance, to have limited liability under the provisions of section 63 thereof, has, in virtue of the authority given to such companies by section 63*a* "to dig for * * * minerals * * * whether belonging to the company or not," power to drill wells for mineral oils on its own property and also to carry on similar work as a contractor on lands belonging to other persons. Idington and Duff JJ. dissented.

Per curiam.—Rock oil is a "mineral" within the meaning of section 63 of the "Companies Ordinance."

Per Duff J.—Drilling for oil is not a mining operation within the contemplation of sections 63 and 63*a* of the "Companies Ordinance."

Judgment appealed from (8 West. W.R. 996) affirmed, Idington and Duff JJ. dissenting.

APPEAL from the judgment of the Appellate Division of the Supreme Court of Alberta(1), affirming the judgment of Hyndman J., at the trial, by which the plaintiffs' action was maintained with costs.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Idington, Duff, Anglin and Brodeur JJ.

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The issues raised on the appeal are stated in the judgments now reported.

Geo. H. Ross K.C. for the appellants.

A. H. Clarke K.C. for the respondents.

THE CHIEF JUSTICE.—I am of opinion that the judgment in this case which was unanimously approved by the judges of the Alberta appeal court is right. I agree with Chief Justice Harvey that

there is ample evidence for thinking that the seizure was not honestly made.

The only question calling for remark is the defence that the contract was *ultra vires* of the respondents. The powers given to companies by section 63*a* of the "Companies Ordinance" include power

(2) to dig for * * * minerals * * * *whether belonging to the company or not.*

The words "to dig for" may not in the popular sense appear very apt to describe the process of boring an oil well of some thousands of feet deep, but the words as used must clearly receive a wide and special interpretation as they would be understood by those concerned with mining. Obviously you cannot obtain the mineral oil by digging with a spade, as the literal meaning might perhaps suggest, but the same is also true as regards all other minerals for mining which modern machinery is employed. It could hardly be suggested that under this power the company is not entitled to bore for oil on its own property. The words, I think, cover any process by which the earth is broken into for the extraction of the minerals.

Chief Justice Harvey says that

one of the objects of the company is to bore for oil as a contractor.

He concludes assuming that if the company is not one which comes within section 63 it is incorporated under section 16 and if the certificate of incorporation states that it is within section 63 it is in error to that extent, but no farther.

The object as stated by the Chief Justice does not appear in so many words in the memorandum of association which, however, does contain the same power as the above quoted paragraph (2) of section 63*a* of the Act.

I am of opinion that the company is limited under section 63, but has power under section 63*a* to enter into the contract.

The appeal should be dismissed with costs.

IDINGTON J. (dissenting).—The respondent company entered into a contract with the appellant to drill two wells on the latter's holdings at such places as it might select to a total depth of 2,500 feet each or, upon its request, to drill 500 feet further; to furnish engine, boiler and fuel, camp, provisions, lumber, labour and all tools and supplies necessary to do the work subject to provisions thereinafter contained; upon the completion of each well to clean out and properly cap same; to extinguish any fire resulting through negligence of the respondent or its servants or agents; to use the best materials and labour available; to proceed continuously in a workmanlike manner; to have in charge of the work during continuance thereof competent drillers; in certain events specified, rendering work abortive, at respondent's expense to set the equipment over to a place to be selected by appellant, and drill, free of cost to it, a hole of same size and depth; to insure against accident each and

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every one of the men employed in said work, in a sum sufficient to cover any damages, and indemnify appellant; to remove from the well all casing therein not required by appellant to be left there; to procure the strata drilled and keep a log of drilling; and not to open same to inspection by any person other than appellants, or give information as to the work to any one else.

Such is a fair general outline of what the respondent undertook and for which it was to get $8.50 per foot, and beyond the specified 2,500 feet $10 per foot.

There are a number of other things agreed to on each side providing for varying and various contingencies in the course of executing the contract or stopping its further prosecution. The parties disagreed, and the appellant took possession of the respondent's plant and dismissed the respondent from the further prosecution of the work. The respondent sued the appellant therefor. The latter set up, amongst other defences, that the contract so entered into was *ultra vires* the respondent company.

The courts below overruled this as well as other defences and entered judgment for respondent.

I incline to think, in all other regards than that relative to the question of *ultra vires,* that the court of appeal was right, but the opinion I have formed relative to this question renders it unnecessary I should form or express any definite opinion as to the other defences.

The opinion of Chief Justice Harvey, concurred in by the other members of the court, contains the following:—

> I am of opinion that it is not necessary to determine whether this company is one which comes within the terms of section 63 or not,

for it is not by virtue of section 63 that it is incorporated. It is incorporated as any other company under the general provisions of the Ordinance. There is no doubt that its object comes within the legislative authority of the province and that, therefore, it may be duly incorporated under the Ordinance. If the certificate of incorporation which, as section 63 says, is issued under section 16 and not under section 63, states that the liability of the company is specially limited under that section when the company is in fact one that does not come within the terms of that section and whose liability, therefore, is not limited under that section, the certificate is in error to that extent, but not necessarily any farther. The company is incorporated because it has complied with the provisions of the Ordinance and obtained a certificate of incorporation and has the powers necessarily incident to a company with its object. One of the objects of the plaintiff is to bore for oil as a contractor.

Clearly, therefore, this contract is within its powers. Section 3 is for the express purpose of limiting the liability of the members. The question of liability does not arise here and it is, therefore, unnecessary to decide whether the company is within section 63 or not.

This extract contains, I think, a fair presentation of the point of view taken by the court of appeal in which I was at first inclined to agree as, possibly, the correct construction of a statute with which I was not familiar.

I find, however, on an examination of the provisions of the Alberta ordinance, known as the "Companies Ordinance," under which the respondent became incorporated, if it ever so became, that I cannot agree either in the view so expressed or the reasoning upon which it proceeds. I assume the section 3 referred to in the extract is a clerical error for section 63.

The "Companies Ordinance" provides, by section 5, as follows:—

5. Any three or more persons associated for any lawful purpose to which the authority of the legislature extends, except for the purpose of the construction or operation of railways or of telegraph lines or the business of insurance, except hail-insurance, may by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration

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form an incorporated company with or without limited liability. 1911-12, ch. 4, sec. 4.

If this company had become incorporated under that provision alone and in the memorandum of association had named one of its objects to be that of carrying on the business of a driller or of a contractor for drilling wells or any such apt terms as covering the business involved in the contract in question herein, there could be no question herein of its powers.

It abandoned any such ground when it chose to become incorporated not by that provision alone, but by virtue of entirely different provisions containing a limitation of that general power and expressly restricting the possible objects of the company within the ambit of what sections 63 and 63*a* provide.

Section 63, in the first part, is as follows:—

63. The memorandum of association of a company incorporated or re-incorporated under this Ordinance, the objects whereof are restricted to acquiring, managing, developing, working and selling mines, mineral claims and mining properties and petroleum claims and lands and natural gas claims and lands and the winning, getting, treating, refining and marketing of mineral therefrom, may contain a provision that no liability beyond the amount actually paid upon shares and stocks in such company by the subscribers thereto or holders thereof shall attach to such subscriber or holder; and the certificate of incorporation issued under section 16 of this Ordinance shall state that the company is specially limited under this section. 1901, ch. 20, sec. 63; 1914, ch. 10, secs. 10, 11.

The memorandum of association certified by the registrar is in the case, but I do not find therein the certificate of incorporation.

The memorandum, by clause (*c*) thereof, states as follows:—

(*c*) The liability of the members is specially limited under section 63, C.O., 1901, ch. 20.

The resolutions contained in "Table A" are excluded. The name and description of the company at

the head of the memorandum indicate it falls, and was intended to fall, under section 63.

The objects specified therein are copied from the twelve objects specified in section 63*a* with one or two omissions in way of clerical errors, I think, in copying No. 1 thereof; and, in addition to No. 3 of the words

especially to refine oil and the by-products of petroleum.

This addition cannot help here and the omitted words in No. 1 rather weaken, if anything, the company's position herein.

Then, these statutory objects are followed by five others which, in my opinion, in no way help, even if operative at all, the respondent in relation to what is involved herein. I shall presently set out these and deal with them in detail.

I am quite clear that the whole purpose of the incorporation was to conform with the provisions of sections 63 and 63*a* in order to get the benefits thereof. The added objects must, therefore, be treated as null so far as, if at all, in conflict with the twelve objects specified in the section 63*a*.

If authority is needed for this proposition, see the somewhat analogous cases of *Baring-Gould* v. *Sharpington Combined Pick and Shovel Syndicate*(1); *Payne* v. *The Cork Co.*(2); where the articles of association were so attempted to be changed as thereby to conflict with or vary the statutory provisions protecting shareholders.

Can any one read the contract in question herein and realize what the respondent was trying to do

(1) [1899] 2 Ch. 80. (2) (1900) 1 Ch. 308.

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thereby and compare it with the evident scope and purpose of the entire section 63*a* without feeling that the respondent in embarking upon the business of a contractor for drilling wells for others was attempting something never contemplated as within the objects defined in that section.

Let us read section 63*a* which prohibits the use of greater powers as follows:—

63*a*. Every company, the objects whereof are restricted as aforesaid, shall be deemed to have the following but, except as in this Ordinance otherwise expressed, no greater powers, that is to say * * *.

Surely the language of these sections 63 and 63*a* exclude the possibility of anything else except the twelve specified objects which follow being *intra vires* the respondent's corporate powers.

The expression "except as in this ordinance otherwise expressed" is not, perhaps, all that it might have been, but clearly was intended to reserve to the company only such other powers as consistent with the existence of a corporate creation with limited objects to be pursued, and liability for the shareholders. Certainly other objects of pursuit were not intended to be reserved by this exception.

Then, do these twelve specified objects cover the business of a contractor for hire, drilling upon the lands of others? The keynote of the whole series is found in the first, which reads as follows:—

1. To obtain by purchase, lease, hire, discovery, location, or otherwise, and hold within the province, mines, mineral claims, mineral leases, prospects, mining lands and mining rights of every description, and to work, develop, operate and turn the same to account and to sell or otherwise dispose of the same or any of them, or any interest therein.

It is a proprietary company that is contemplated thereby.

True, when it comes to the business of smelting it may have to deal with the minerals of others and that is provided for. And, in relation to such like work or that done by its vessels, it can take compensation for work done.

From beginning to end of the section there is only the very inapt expression "to dig for" that can by any straining of the language be made to fit what this contract involves.

It is a mining company, as the Act elsewhere expresses it, that is had in view, not a drilling company or contracting company, that is intended to be given these special powers.

The following passage condensed from judicial opinions, and appearing on page 9 of Buckley on Joint Stock Companies (9 ed.), in which I parenthetically incorporate his foot-note references, may be safely taken as our guide.

The memorandum of association of the company is its charter, and defines the limitation of its powers (*per* Cairns L.C., *Ashbury Co.* v. *Riche*(1), and the destination of its capital (*Guinness* v. *Land Corporation of Ireland*(2)). A statutory corporation created by Act of Parliament for a particular purpose is limited as to all its powers by the purposes of its incorporation as defined by that Act. The memorandum of association is under this Act the fundamental and (except in certain specified particulars) the unalterable law of companies incorporated by virtue of it. (*Per* Lord Selborne(3)..)

But the doctrine that any act *ultra vires* the memorandum is void is to be applied reasonably. Anything fairly incidental to the company's objects as defined is not (unless expressly prohibited) to be held as *ultra vires* (*Attorney-General* v. *Great Eastern Railway Co.* (4); *London and North Western Railway Co.* v. *Price*(5); *Foster* v. *London, Chatham and Dover Railway Co.*(6); *Attorney-General* v.

(1) L.R. 7 H.L. 668.
(2) 22 Ch. D. 349.
(3) L.R. 7 H.L. 693.
(4) 11 Ch. D. 449, 480; 5 App. Cas. 473.
(5) 11 Q.B.D. 485.
(6) [1895] 1 Q.B. 711.

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London County Council(1); *Attorney-General* v. *North Eastern Railway Co.*(2); *Attorney-General* v. *Mersey Railway Co.*(3). * * *

A contract made by the directors upon a matter not included in the memorandum is *ultra vires* of the company and, therefore, of the directors. It is not binding on the company, and cannot be rendered binding even by the assent of every individual shareholder. (*Ashbury Co.* v. *Riche*(4); *Wenlock* v. *River Dee Co.*(5).

The cases cited in support of these respective propositions amply bear them out.

The application of these authorities to the case in hand deserves some attentive care.

The learned Chief Justice of the court of appeal says

one of the objects of the plaintiff is to bore for oil as a contractor.

I have read many times the objects as set forth in the memorandum of association to find what the court rests that upon. There is nothing of that kind expressed therein in so many words, and I assume it is an inference drawn from what does appear that is relied on.

With great respect I submit the inference is not well founded.

There is clearly contemplated in object No. 5 a conditional dealing, and in objects Nos. 8 and 9 a dealing with other companies. These, however, are far from being in the way of contracting to drill wells for others.

I can, however, conceive in the manifold complications which might arise out of or incidental to such dealings, a need of power to contract for the drilling of a well.

(1) (1901) 1 Ch. 781; (1902) A.C. 165.
(2) (1906) 2 Ch. 675.
(3) (1907) 1 Ch. 81; (1907) A.C. 415.
(4) L.R. 7 H.L. 653.
(5) 36 Ch. D. 675*n*.

In the execution of such a purpose it might be fairly argued that it fell within the principle of what was involved in the cases of *The Attorney-General* v. *The Great Eastern Railway Co.*(1), or *London and North Western Railway Co.* v. *Price & Son*(2), or *Foster* v. *London, Chatham and Dover Railway Co.*(3), or *Attorney-General* v. *The North Eastern Railway Co.*(4), cited above.

But all these and analogous cases are very far from covering what is involved in this case and is broadly put as a right to bore for oil as a contractor.

All such incidental powers have to be interpreted reasonably. This case goes, in my opinion, far beyond what was held, for example, in the case of *London County Council* v. *The Attorney-General*(5), or the case of *The Attorney-General* v. *Mersey Railway Co.*(6) cited above.

Numerous other cases are to be found drawing the distinction as to what is reasonably incidental. None I have been able to find reach as far as needed to support the respondent in this case.

One difficulty in finding authority directly bearing upon this case is the anomalous nature of the power given to create such a corporation as was, evidently, had in view in the amendment brought into the "Companies Ordinance" which is an Act founded upon and largely copied from the English "Companies' Act," but which has no provision exactly like this amendment.

(1) 11 Ch. D. 449, at p. 480; 5 App. Cas. 473.
(2) 11 Q.B.D. 485.
(3) (1895) 1 Q.B. 711.
(4) [1906] 2 Ch. 675.
(5) (1901) 1 Ch. 781; (1902) A.C. 165.
(6) (1907) 1 Ch. 81; (1907) A.C. 415.

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It evidently stands by itself and must be treated as an attempt to enable the creation of corporations with the objects specified in 63(*a*) and not going beyond them.

The court of appeal suggests the company is incorporated by virtue of the Act and the limitations of section 63 only affect the liability of the shareholders. I submit every company that is incorporated by virtue of such Acts as this is only incorporated for the objects set out in its memorandum of association, and as above authorities shew, cannot do any act as a corporation which goes beyond the scope and purposes of the expressed objects for which it has been incorporated, or that fairly incidental thereto.

If there is any room for misapprehension in this regard, besides what I have already said, and am about to say, I would call attention to the language of the 2nd sub-section of section 63, which reads as follows:—

> (2) This amendment (1914, ch. 10, sec. 10(1)) shall apply to all companies heretofore incorporated under section 63 of the "Companies Ordinance." 1914, ch. 10, sec. 10(2).

That shews the legislature assumed, so late as 1914, that the incorporation took place under section 63, and to make that clear amended the Act by section 63(*a*).

The case of *Baroness Wenlock* v. *River Dee Co.*(1), and in appeal reported in the note thereto, pp. 675 *et seq.* (cited by Buckley for the support of his proposition lastly quoted above) furnishes something of value beyond the main point of *ultra vires* in its bearing upon the reliance put in the above extract from the

(1) 36 Ch. D. 674.

judgment from the court of appeal for Alberta upon the certificate of incorporation. In that case the incorporation was by an Act of Parliament for a specific purpose empowering the borrowing upon mortgage of £25,000. It borrowed more; and the power given the Lands Improvement Company (which lent the money) to advance was relied upon and especially by reason of a clause in one of its Acts making the certificate of the Inclosure Commissioners conclusive evidence of a valid charge under the Act.

It was held the certificate could not enlarge the powers of the defendant company and that the statutory validating certificate was of no avail.

It becomes us, therefore, I submit, not to rely upon the registrar's certificate of respondent's incorporation if it was that which he had no right in law to grant.

Assuming for the moment that he presumed to certify otherwise than specially provided for in section 16, generally to the incorporation of a company as if unrestricted in its objects, when the parties were plainly proceeding by the express terms in the memorandum of association for the incorporation of a company limited as to the liability of its members by section 63, then he clearly did that which he had no warrant in law for doing.

There is no provision made for the incorporation of a company having this limited liability, had in view in section 63, with objects beyond those specified in section 63*a*, by the "Companies Ordinance." And if that is to be taken as accomplished in this case, as the court of appeal has apparently taken it, then I have no hesitation in holding that there has been no

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incorporation of the respondent company and the appellant is entitled to succeed.

In such a case we ought to see that the law is not thus abused and to do so should give effect to the statement of defence in that regard and if not sufficiently explicit, leave to amend accordingly should be given as the court below should have done if necessary. As the company sues and in suing asserts its due incorporation, and that is sufficiently denied, there should be no need for amendment.

I am not, however, for my part able to presume that any officer could venture upon giving any such unconditional certificate, but, on the contrary, presume that he gave a certificate in conformity with section 16 of the Act, which shewed the company to be limited in its character and powers by sections 63 and 63*a*.

Lest it may be said, though not so argued before us, that the words (in the second and third lines of section 63) "the objects whereof are restricted to," etc., may render the foregoing reasoning inapplicable because there were five enumerated objects following the statutory twelve, and hence the objects not restricted, I will briefly examine same and indicate what I think the effect thereof.

They are as follows:—

(13) To obtain any provisional order or Act of Parliament for enabling the company to carry any of its objects into effect, or for effecting any modification of the company's constitution or for any purpose which may seem expedient, and to oppose any proceedings or applications which may seem calculated, directly or indirectly, to prejudice the company's interests.

(14) To procure the company to be registered or recognized in any foreign country or place.

(15) To sell, improve, manage, develop, exchange, lease, mort-

gage, dispose of, turn to account, or otherwise deal with all or any part of the property and rights of the company.

(16) To do all or any of the above things as principals, agents, contractors, trustees or otherwise, and by or through trustees, agents or otherwise and either alone or in conjunction with others.

(17) To do all such other things as are incidental or conducive to the attainment of the above objects.

These clearly add nothing to cover the business of a well borer and contractor. They also may be held if reasonably interpreted to add nothing but what might be implied in the foregoing statutory objects, Nos. 1 to 12 inclusive, as incidental thereto.

The first, however, is of the nature of what was held as to the articles of association in the cases cited on pp. 18 and 34 of Hamilton and Parker's Company Law, to be in conflict with the memorandum of association, and hence to be invalid. The same reasoning may render it futile here when the Act is looked at as a whole and its scope and purpose shewn.

If it refers to the Dominion Parliament it certainly seems out of place, and if to the Legislature of Alberta, still more so. The former should not interfere, but the latter can, and the subject matter does not seem to consist of what one would expect to find as the object of a corporation.

No. 14, the second of these, certainly is rather curious in light of the recent discussion so much agitated in the *Companies' Case*(1), and a curious commentary on, or display of ignorance of, all implied therein. Certainly it is otherwise of little use and possibly itself *ultra vires*.

The No. 15 seems also useless in light of the provisions of the statute.

(1) 48 Can. S.C.R. 331.

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Again, however, I submit, if effective to take the company out of the operation of section 63, the result is the company never was incorporated.

There is no place in this statute where the hybrid sort of thing having the combined objects of pursuit resting upon the other incorporating powers and also those in section 63 combined, is provided for.

These criticisms of what the supplementary objects may be worth are in my own view of the statute in a sense beside the question.

Looked at comprehensively and endeavouring to give the statute a reasonable meaning in accord with its scope and purpose, there is provided an incorporating power almost as extensive as the legislature had power to confer, and a procedure to accomplish such results as the power aims at.

Then there is within that a power to incorporate, but only for specific objects named in section 63*a* with unusual powers suitable to the pursuit of such objects, but which the legislature deemed it inexpedient to confer on companies for the pursuit of other objects. If those seeking incorporation desired a general incorporation and did not desire such unusual powers, they could pursue the same objects in the ordinary way and subject to the law governing such methods.

It is left for the parties concerned to declare in their memorandum of association when proceeding to procure incorporation which of those distinctly different kinds of incorporation they wish to obtain.

When they elect to obtain that proffered under section 63, they are limited to the objects named in section 63(*a*), and cannot add others.

If they specified others those others must be

treated as null if in conflict with or expanding the objects so prescribed in section 63(*a*) of the statute.

If we will only apply reasoning analogous to that which Lord Cairns applied in the case of *Ashbury Railway, etc., Co.* v. *Riche*(1), cited above at 670 *et seq.* when he demonstrated the ambit of the memorandum of association to be the dominant factor for consideration and the articles of association in conflict therewith null I submit substituting statute for memorandum of association we may see that the inevitable result is any departure from statute or memorandum of association must be treated as null.

It so happens in my view that the memorandum of association is but an expression of that which is required by the statute as I interpret and construe it, and is required by the statute to be so expressed.

That being so these supplementary objects so called are of no effect, should never have been permitted if at all in conflict with those which preceded it copying the statute. And I am inclined to think they should not have been permitted.

The result of my construction would be, if acted upon here, to deprive respondent of its present judgment, but, if I understand the facts aright, the appellant has taken possession of the respondent's property by virtue of the terms of an *ultra vires* contract.

That contract is, by reason thereof, void, but that fact does not deprive it of its property even if acquired for use in a purpose *ultra vires*. And certainly it did not warrant appellant taking it and despoiling respondent thereof either temporarily or permanently.

(1) L.R. 7 H.L. 653.

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See the cases *Ayres* v. *South Australian Banking Co.*(1), at page 559; and *National Telephone Co.* v. *Constables of St. Peter Port*(2), at page 321. *Cf. Great Eastern Railway Co.* v. *Turner*(3).

I think, therefore, the appeal should be allowed, but under the circumstances without costs, and the judgment below be vacated and judgment rendered for recovery of respondent's property in same plight and condition as when taken, but if that is impossible then there should be a reference to find and report for further consideration bearing upon the question of the property and the damages, if any, done same.

The following cases may, besides those cited above, usefully be referred to:—

Bisgood v. *Henderson's Transvaal Estates*(4); *Attorney-General* v. *Frimley and Farnborough District Water Co.*(5); *In re Crown Bank*(6); *Pedlar* v. *Road Block Gold Mines of India*(7); *Mayor, etc., of Westminster* v. *London and North Western Railway Co.*(8); *Mann* v. *Edinburgh Northern Tramways Co.*(9); *Simpson* v. *Westminster Palace Hotel Co.*(10).

DUFF J. (dissenting).—I have come to the conclusion that the general words of section 63*a* of the "Companies Ordinance" in force in Alberta on the 16th May, 1914 (when the appellant company was incorporated) must be restricted by the application of the principle *noscitur a sociis*. The enactment was borrowed from the statute of British Colum-

(1) L.R. 3 P.C. 548.
(2) [1900] A.C. 317.
(3) 8 Ch. App. 149.
(4) [1908] 1 Ch. 743.
(5) [1908] 1 Ch. 727.
(6) 44 Ch. D. 634.
(7) [1905] 2 Ch. 427.
(8) [1905] A.C. 426.
(9) [1893] A.C. 69.
(10) 8 H.L. Cas. 712.

bia passed in 1897 in circumstances that are well known and with reference to companies carrying on operations which have no relation to exploring for or developing oil wells. The tenor of the enactment as a whole sufficiently indicates this. And, if I were called upon to construe the British Columbia statute, I should not have the slightest hesitation in holding that the Act does not apply to a company carrying on a business of the character which the appellant company appears to have been pursuing.

I am not aware, however, that the question of the scope of the enactment had been passed upon by the courts of British Columbia before its adoption by the Alberta Legislature and the Alberta statute cannot, of course, be construed by reference to the circumstances in which, fifteen years before, the parent enactment was passed. It is stated as a fact, and not disputed, that, at the time the enactment was passed, oil had not been found in Alberta in conditions making the development of oil fields commercially profitable, and that circumstance may be given its proper weight. The ground, however, upon which I rest my construction of the statute is this: The words "mining" and "mineral" are words of very elastic meaning and they are words whose scope has frequently been retricted by the application of the principle *noscitur a sociis*. There is no technical difficulty in the way of so restricting this meaning as to exclude mineral oil and boring for oil; as the general scope of the enactment appears to indicate, with sufficient clearness, that they are not within the contemplation of it. Looking at section 63*a* as a whole, any lawyer experienced in such matters would immediately re-

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cognize that the objects of companies coming within the section are stated in language which is simply that of the common objects' clause in the memorandum of association of a metalliferous mining company. It is not so much from any single phrase or single clause or group of words as from the section as a whole that one draws the inference that such operations as those carried on by the appellant company are outside the contemplation of the section. The restrictive intent, to use the phrase of Holmes J., "breathes from the pores" of the enactment.

The question of substance is whether the judgment of the court below can be sustained on the ground stated in the reasons given by the learned Chief Justice. With great respect, I cannot accept the view to which the court below has given effect. The memorandum of association, by section 10 of the "Companies Ordinance" of Alberta, (ch. 61, "Consolidated Ordinances,") is a contract between the signers and the company. The dominating clause of the memorandum before us is, very clearly to my mind, clause (*c*) which declares in effect that the objects of the company are restricted to those objects authorized by section 63*a*. Every word of the objects' clause in the memorandum must, therefore, be read subject to the qualification

> providing such objects are authorized by the true construction of section 63(*a*).

The premise is negatived, therefore, upon which the court below proceeds, namely, that the objects stated in the memorandum go beyond the field within which companies governed by section 63*a* are permitted to operate, because whatever might be the meaning of the objects' clause taken by itself it cannot be given such

a construction in view of the explicit declaration that the intent of the memorandum is that it shall not have that effect.

There are two reasons why I think this is the right way of reading the memorandum. In the first place there can be no doubt that what the parties at the time decided to do was to incorporate a company on the "non-personal liability" principle. The signers of the memorandum had their own protection to think of, they had the shareholders, with whom they intended to associate themselves, to think of. The design was to represent the company to the world as a company incorporated on that principle, and I think we must impute to the signers an intention to execute a memorandum having the meaning and effect necessary to bring it within the scope of section 63*a*.

Secondly. Any other view would make the statute a trap.

The amendment of 1914 admittedly cannot be invoked in this action.

The appeal should be allowed with costs.

ANGLIN J.—The appellant asks us to hold that, although it is incorporated under the name—"The Dome Oil Company"—it is nevertheless not within the scope of its powers to seek for and win oil from its property, and that it is likewise *ultra vires* of the respondent, "The Alberta Drilling Company," to undertake a contract to drill for oil on the appellant's lands. Counsel based this contention on the construction which he put on sections 63 and 63*a* of the ordinance of the North-West Territories respecting companies, made applicable to these litigants. He argued that oil is not a mineral within the meaning of

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section 63 and clauses 1 and 2 of section 63*a*, and that drilling for oil is not a process authorized by the latter clauses. In my opinion the construction contended for is too narrow. Rock oil is admittedly a mineral within definitions of that word well established and generally accepted. It was something well known as a mineral when the legislation under consideration was passed. There is nothing in the record to justify a finding, such as was made in the *Farquharson Case*(1), relied on by the appellant, that petroleum was not included in the sense in which the word "mineral" was used in the vernacular of the mining world and the commercial world at the date of the instrument under construction.

No sufficient reason has been advanced for excluding it from the purview of sections 63 and 63*a*. The word "minerals" in a statute bears its widest signification unless the context or the nature of the case requires it to be given a restricted meaning. *Lord Provost and Magistrates of Glasgow* v. *Farie*(2), at pages 690, 693; *Hext* v. *Gill*(3), at page 712; *Earl of Jersey* v. *Guardians of the Poor of Neath Poor Law Union*(4); *Ontario Natural Gas Co.* v. *Gosfield*(5). Here the use of the word "minerals" in juxtaposition with, but in contrast to, "metallic substances" affords a strong reason for giving to the former its widest meaning. Why should Parliament in enacting legislation dealing with minerals and mining matters be taken to have used the term "min-

(1) 22 O.L.R. 319; 25 O.L.R. 93; [1912] A.C. 864.
(2) 13 App. Cas. 657.
(3) 7 Ch. App. 699.
(4) 22 Q.B.D. 555.
(5) 19 O.R. 591; 18 Ont. App. R. 626.

erals" subject to a restriction which it has not expressed ?

The word "drilling" is not found in the statute, but an authorized purpose of incorporation under clause 1 of section 63*a* is the winning or getting of mineral from the earth, and under clause 2 "digging for" and "raising" are means expressly authorized, and sufficiently comprehensive, I think, to include drilling, which is a method of digging for, with a view to raising oil.

It may be that the incorporation of a company subject to the provisions of section 63 upon a memorandum expressing wider purposes, but with the intent of confining its operations to the undertaking of drilling contracts upon properties not its own would be such a fraud on the statute as would justify the revocation of the incorporation. But fraud on the statute has not been suggested.

I think it would be very dangerous to hold, as appears to be suggested in the judgment of the Appellate Division, that merely because some of the purposes and powers of a company expressly incorporated subjects to sections 63 and 63*a* happen to exceed what those provisions contemplate, its shareholders are to be denied the protection which section 63 affords and that section and section 63*a* are to be deemed inapplicable to it. I rather think the effect of section 63*a* is to restrict the powers of such a company within the limits which it prescribes notwithstanding any wider language used in the memorandum of association.

Mr. Ross next contended that if the respondent company had power itself to seek for and obtain oil,

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it had not the power to undertake to do so for another person or company. That again, in my opinion, is too narrow a construction and ignores the provisions of clause 2 of section 63(*a*) which extend to minerals, etc., "whether belonging to the company or not," of clause 3, which authorize the carrying on of the business of mining, "in all or any of its branches," and of clause 8, which provide for co-operation, etc.

I am unable to assent to the argument that the existence of a debt by the respondent company for a portion of the purchase price of machinery placed by them on the appellant's lands—a purely personal obligation—constituted a breach of their covenant to place their machinery, etc., on the appellant's premises "free of debt and of all and every lien and incumbrance." There was no lien or incumbrance charged upon the respondent's machinery; it was free of debt; a mere personal debt not creating a charge was, in my opinion, not within the scope of the covenant.

I have found no reason to differ from the conclusion of the provincial courts that there had been no other default on the part of the respondent which would entitle the appellant company to seize under clause 10 of the contract.

The plaintiff's recovery of $5,000 was, I think, warranted, under clause 3 of the contract. The fact that the appellant had committed a wrongful breach of contract cannot, in the absence of an acceptance by the respondent of the breach as a termination of the contract, afford an answer to the appellant's absolute and unqualified undertaking that upon the respondents doing certain things (which they did) it would pay to them a fixed sum of money. The $250 allowed

as damages for the wrongful seizure is not complained of.

I would, for these reasons, dismiss this appeal with costs.

Brodeur J.

BRODEUR J.—The illegality of the seizure of the plant depended on questions of fact which have been found against the appellant company by the courts below. That finding was absolutely justified by the evidence and we must then decide that the seizure was illegal.

The appellants have to pay to the respondents damages for having stopped the work and for having, through that illegal seizure, prevented the respondents from carrying out their contract. The amount granted by the trial judge is perhaps calculated on a wrong basis, but the evidence justifies the amount which has been awarded.

The appellant now contends that the contract in question was *ultra vires* the appellant and the respondent companies. Those two companies were incorporated under the provisions of chapter 20 of the Ordinances of the North-West Territories of 1901 and of the amendments made thereto by the Legislature of Alberta.

It is not disputed that appellant and respondent companies could be legally formed under the provisions of that law for carrying out the oil operations for which they were respectively organized. But as their liability is limited by the mining sections of the Act, the appellants claim that the statute never contemplated including oil as a mineral substance. They rely mostly upon the judgment rendered by the Privy

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Council in the case of *Barnard-Argue-Roth-Stearns Oil and Gas Co.* v. *Farquharson*(1).

In that case, the Privy Council, in construing a deed of 1867 which reserved to the grantor mines and minerals, decided that natural gas was not included in that reservation, because

> at the date of the deed, natural gas had no commercial value and the parties thereto had no intention to except it as being a mine or mineral.

The section 63*a* we have to construe in this case was passed by the Legislature of Alberta at a time when the oil wells of that province were being exploited on a very large scale and it is to be presumed that the legislation was passed with a view of facilitating the development of that mining industry. In applying the principles laid down by the Privy Council in the above case, we must come to the conclusion that the legislature intended to include in the mining companies those dealing with rock oil.

Rock oil in its popular and scientific meaning is a mineral substance. Mineral bodies occur in three physical conditions, solid, liquid and gas; and although the term "mineral" is more frequently applied to substances containing metals, rock oil and petroleum are embraced in that term.

United States v. *Buffalo Natural Gas Fuel Co.*(2); *Ontario Natural Gas Co.* v. *Gosfield*(3), at pages 626-631.

I have come to the conclusion that the companies

(1) [1912] A.C. 864.
(2) 78 Fed. R. 110.
(3) 18 Ont. App. R. 626.

could properly enter into the contract sued on and that the obligations assumed by them can be enforced.

The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellants: *Short, Ross, Selwood, Shaw & Mayhood.*

Solicitors for the respondents: *Gilchrist & O'Rourke.*