

IN THE MATTER of the Petition of Right of

FREDERICK DANIEL FROOKS.....SUPPLIANT;

908

January 7.

AND

HIS MAJESTY THE KING.....RESPONDENT.

*Mines and minerals—Yukon Territory Act—Hydraulic mining regulations
—Application for lease—Refusal by Crown to grant same.*

PETITION OF RIGHT by the suppliant, a free miner in the Yukon Territory, asking for the grant of an absolute lease of hydraulic mining privileges within certain areas for which at the time of filing his petition he held a provisional lease.

July 25th, 1907.

T. Mayne Daly, K.C. for the suppliant;

Geo. F. Shepley, K.C. and *Henry C. Bleecker* for the respondent.

The case was heard at Dawson before the late Mr. Justice Burbidge. The learned judge having fallen ill before his engagements permitted him to deliver a considered judgment in this case, he delivered the following judgment for the purpose of enabling the parties to bring the questions at issue before the Supreme Court on appeal.

January 7th, 1908.

I venture to ask the parties and anyone who reads this short note not to come to the conclusion that the judgment which I am about to enter is given upon due consideration of the merits of the case. At the time when the evidence, taken at Dawson, was forwarded to the registry of the court at Ottawa and the record thereby completed, and since that time, my other engagements

were such as prevented me from taking the matter up and dealing with it in an adequate manner. And now the state of my health prevents me from giving the case the consideration which it deserves. However, it does appear to me to be important that the litigation should be advanced another stage and that it is in the interests of the parties themselves that it be put in a position where the questions in issue may be brought before the Supreme Court of Canada rather than there should be a rehearing or reargument in this court. And for that I am not without a precedent. For in the case of *The Attorney-General for British Columbia v. The Attorney-General for Canada* (1), the decision of the Exchequer Court was taken by consent and without argument in order to facilitate the bringing of the case directly to the Supreme Court. It is true that in this case I have not the consent of the parties, but I think I may take it for granted that they would consent to a course of procedure which appears to me to be so much in their interest. The main question it seems to me that I need to decide is as to the party upon whom the burden of bringing the appeal should be thrown, and in this case I think that burden should fall upon the suppliant.

There will be judgment for the respondent in the usual statutory form of judgments on Petitions of Right.

*Judgment accordingly.**

Solicitors for the suppliant: *Daly, Crichton & McClure.*

Solicitor for the respondent: *G. F. Shepley.*

(1) 14 S. C. R. 345.

* REPORTER'S NOTE:—Affirmed on appeal to Supreme Court of Canada, 40 S. C. R. 258.

1908
FROOKS
v.
THE KING.
Reasons for
Judgment.