

IN THE MATTER of the Petition of Right of

EDWARD WARD SMITH.....SUPPLIANT;

1908

AND

January 7.

HIS MAJESTY THE KING.....RESPONDENT.

*Mines and minerals—Yukon Territory Act—Hydraulic 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 a grant of hydraulic mining privileges within the said territory.

July 24th and 25th, 1907.

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

George F. Shepley, K.C. and *Henry C. Bleeker* for the respondent.

The case was heard and argued before the late Mr. Justice Burbidge, at Dawson. The learned Judge having fallen ill before his engagements permitted him to deliver a considered judgment in the case, he delivered the following judgment on the 7th January, 1908, for the purpose of enabling the parties to bring the questions at issue before the Supreme Court on appeal :—

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 to prevent 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

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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 that there should be a rehearing or a re-argument 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, therefore, 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.