

judgment no. 30, 1974



IN THE PRIVY COUNCIL

No. 16 of 1973

O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N:

CUDGEN RUTILE (NO.2) PTY. LTD. (First Plaintiff)

QUEENSLAND TITANIUM MINES PTY. LIMITED (Second Plaintiff) Appellants

- and -

GORDON WILLIAM WESLEY CHAIK (Defendant) Respondent

IN THE PRIVY COUNCIL

No. 17 of 1973

O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N:

QUEENSLAND TITANIUM MINES PTY. LIMITED (Plaintiff) Appellant

- and -

GORDON WILLIAM WESLEY CHAIK (Defendant) Respondent

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O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

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B E T W E E N :

CUDGEN RUTILE (NO.2) PTY. LTD. (Plaintiff)  
Appellant

- and -

GORDON WILLIAM WESLEY CHALK (Defendant)  
Respondent

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CASE FOR THE APPELLANTS

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1. This Case is divided into Parts as follows :-
- Part A - Introduction (paragraphs 2 - 7)
  - Part B - The Principal Causes of Action  
(Paragraphs 8 - 29)
  - Part C - The Grounds of Demurrer to the  
Principal Causes of Action  
(Paragraphs 30-39)
  - Part D - The Decision of the Full Court in  
Relation to the Principal Causes of  
Action (Paragraphs 40-43) 20
  - Part E - The Appellants' Submissions in  
Relation to the Questions of Pleading  
Referred to in the Reasons for  
Judgment of Hanger C.J. (Paragraphs  
44-48)

Part F - The Appellants' Submissions in Relation  
to the Grounds of Demurrer  
(Paragraphs 49-65)

Part G - The Alternative Causes of Action  
(Paragraph 66)

Part H - The Grounds of Demurrer to the  
Alternative Causes of Action  
(Paragraph 67-73)

10 Part I - The Appellants' Submissions in relation  
to the Alternative Causes of Action  
(Paragraph 74)

Part J - The Reasons of Appeal (Paragraph 75)

#### PART A - INTRODUCTION

- 20 2. These are appeals against certain orders made  
and judgments pronounced by the Full Court of  
the Supreme Court of Queensland (hereinafter  
called "the Full Court") in three actions  
(Nos. 929, 930 and 931 of 1972) instituted by  
the appellants as plaintiffs in the Supreme  
Court of Queensland.
- 30 3. In each such action the respondent was a nominal  
defendant appointed to represent the Government  
of Queensland pursuant to The Claims against  
Government Act (of 1866), and the plaintiffs  
were :-
- (a) Appeal No.16 of 1973 (Action No.931 of  
1972) - both appellants;
  - (b) Appeal No.17 of 1973 (Action No.930 of  
1972) - the appellant Queensland Titanium  
Mines Pty. Limited;
  - (c) Appeal No.18 of 1973 (Action No.929 of  
1972) - the appellant Cudgen Rutile (No.2)  
Pty. Ltd.

4. The three appeals to the Judicial Committee were consolidated by an order made on the 26th day of February 1974
5. The orders and judgments appealed against are as follows :-

Appeal No.16 of 1973 (Action No.931 of 1972)

p.56,1.26 to p .57,1.3 (a) an order allowing the respondent's Demurrer to the whole of the appellants' amended Statement of Claim (save paragraphs 37 and 38 and claim (F) thereof), with costs of such Demurrer to be taxed; 10

p.57, 11.4-10 (b) a judgment in such action ordered to be entered for the respondent against the appellants with certain costs of such action to be taxed

Appeal No.17 of 1973 (Action No.930 of 1972)

p.2/60, 11.1-13 (a) an order allowing the respondent's Demurrer to the whole of the appellant's Statement of Claim (save paragraphs 36 and 37 and claim (F) thereof), with costs of such Demurrer to be taxed; 20

p.2/60, 11.14-21 (b) a judgment in such action ordered to be entered for the respondent against such appellant with certain costs of such action to be taxed

Appeal No.18 of 1973 (Action No.929 of 1972)

p.3/49, 11.27-33 (a) an order allowing the respondent's Demurrer to the whole of the appellant's Statement of Claim with costs of such Demurrer to be taxed; 30

p.3/49, 1.33 to p.3/50, 1.4 (b) a judgment in such action ordered to be entered for the respondent against such appellant with costs of such action to be taxed.

6. In Appeal No.16 of 1973 the Demurrer was not to the whole of the amended Statement of Claim (hereinafter called "the Statement of Claim"), but excluded one cause of action, namely that pleaded in paragraphs 37 and 38 and claim (F). At the time of delivery of the Demurrer, however, the respondent paid into Court certain moneys in respect of the cause of action pleaded in paragraphs 37 and 38 and claim (F) of the Statement of Claim. Those moneys were accepted by the appellants and taken out of Court by them pursuant to an order of Matthews J. made prior to the making of the order allowing the Demurrer. Accordingly, the order allowing the Demurrer disposed of all the remaining claims made by the appellants in their Statement of Claim and the Full Court then gave judgment in the action for the respondent. A similar course was taken in Appeal No.17 of 1973 with respect to the cause of action pleaded in paragraphs 36 and 37 and claim (F) of the amended Statement of Claim (hereinafter called "the Statement of Claim").
7. These appeals are brought pursuant to orders of the Full Court made on 18th May, 1973 granting to the appellants conditional and final leave to appeal. In each case the Full Court at that time also ordered that the appeal against the order allowing the demurrer be consolidated with the appeal against the judgment dismissing the action.

p.58,11.16-46  
p.2/101,11.2-  
p.3/51, 11.7-

PART B - THE PRINCIPAL CAUSES OF ACTION

8. The appellants are companies which are incorporated in Queensland and which carry on the business of mineral sand mining, i.e., mining for deposits of rutile, zircon, ilmenite and monazite and certain other minerals commonly found in association with rutile, zircon, ilmenite and monazite. Mining for such minerals has at all material times been regulated in Queensland by the provisions of The Mining Act of 1898 as amended from time to time (the last such amendment having been made in 1967), and by

Regulations made by the Governor in Council under the power conferred upon him in that regard by s.247 of that Act. (The Mining Acts, 1898 to 1967 were repealed by s.4 of the Mining Act 1968 as amended which came into force on 1st January, 1972, but the appellants will submit that the repeal of The Mining Acts, 1898 to 1967 does not affect the present proceedings.)

9. The appellants' claims in these proceedings arise 10  
out of the refusal of the Government of  
Queensland to grant them certain special  
mineral leases in respect of such minerals in a  
large and almost uninhabited coastal dune area  
which is about 100-150 miles north of Brisbane,  
and which is commonly known as "Cooloola". All  
such minerals in the areas in question were the  
property of the Crown (The Mining on Private  
Land Acts, 1909 to 1965, s.21A(3)). The appellants  
carried out extensive prospecting and investiga- 20  
tions in and in relation to these areas in  
pursuance, they claim of contracts between the  
Government of Queensland and themselves,  
whereby the Government had agreed to grant them  
certain mineral leases over such land. The  
way in which these claims arise is now set out.

Appeal No.16 of 1973

10. Thus, on 27th June, 1966 the appellants were  
jointly the holders of an Authority to Prospect  
(No.270M) granted to them under s.23A of The 30  
Mining Acts, 1898 to 1955 by the Minister for  
Mines (Appeal No.16 of 1973, Statement of Claim  
paragraphs 4-6; Schedule A to Demurrer). That  
Authority to Prospect was in respect of an area  
of approximately 18 square miles of Cooloola,  
and the appellants were entitled to a renewal  
of it for a further period of one year from 1st  
July, 1966 (Appeal No.16 of 1973, Statement of  
Claim paragraph 6; Schedule A to Demurrer, cc.2  
and 24 and Variation dated 5th July, 1965). By 40  
letter dated 27th June, 1966 the appellants  
applied for a renewal of the Authority to  
Prospect (Appeal No.16 of 1973, Statement of

- Claim paragraph 7, Schedule B to Demurrer), and in reply received from the Under-Secretary for Mines (the permanent head of the Department of Mines) a letter dated 6th July, 1966 stating that he had been authorized to offer them instead a new Authority to Prospect in the form of a draft enclosed with such letter over the same area of 18 square miles (Appeal No.16 of 1973, Statement of Claim, paragraphs 8 and 9; Schedule C to Demurrer). The letter from the Under-Secretary for Mines prescribed the steps to be taken by the appellants if they accepted such offer, and those steps were taken (Appeal No.16 of 1973, Statement of Claim paragraph 10; Schedules D and E to Demurrer). The appellants would respectfully draw attention to the fact that this correspondence uses the elementary language of contract.
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11. The offer of an Authority to Prospect which had been accepted by the appellants provided, inter alia, for :-
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- (a) the term of the Authority to be four years commencing on 1st July, 1966 (cl.1);
- (b) the appellants to have the right to prospect the land subject to the Authority during that period for the purpose of determining the existence or otherwise of all minerals other than coal (mining for which is dealt with under the Coal Mining Act 1925 as amended), mineral oil and petroleum (mining for which is dealt with under the Petroleum Act 1923 as amended) and their extent and nature in such land (cl.5);
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- (c) a deposit (cl.6) and annual rental (cl.7);
- (d) a minimum annual expenditure by the appellants (cl.9);
- (e) the making of regular reports by the appellants to the Minister for Mines (cl.11); and
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- p.6, 11.6-11.  
p.33, 1.1 to  
p.34, 1.10
- p.6, 11.12-37  
p.34, 1.11 to  
p.43, 1.24
- p.6, 11.38-42  
p.43, 1.25 to  
p.45, 1.24
- p.46 11.19-21
- p.47, 1.38 to  
p.48, 1.6
- p.48, 11.7-36
- p.49, 11.7-32
- p.50, 11.5-43

p.52,11.8-19

(f) most importantly for the appellants, a right to obtain mining leases over any part of the lands the subject of the Authority to Prospect (cl.20).

p.8, 1.27 to  
p.9, 1.10

12. At the time when the appellants accepted that offer the Government knew that the appellants intended, during the term of the Authority to Prospect, to apply for mineral leases (Appeal No. 16 of 1973, Statement of Claim, paragraph 18) over some or all of the areas in question. 10

13. The offer accepted by the appellants had been in respect of the Crown Land, private land and reserves (excluding National Parks) in the area in question and, after the offer had been accepted, two Authorities to Prospect were issued. These were granted :-

(a) as to one, on 4th August, 1966 by the Governor in Council under s.46(1)(a) of The Mining Acts in respect of so much of the area in question as consisted of "reserves" within the meaning of that Act; and 20

(b) as to the other, on 15th September, 1966 by the Minister for Mines under s.23A(1) of The Mining Acts in respect of so much of the area in question as consisted of "Crown land" within the meaning of that Act and under s.12A(2) of The Mining on Private Land Acts, 1909 to 1965 in respect of so much of the area in question as consisted of "private land" within the meaning of both such Acts (which are to be read together - s.1 of The Mining on Private Land Acts). 30

p.6,1.43 to  
p.7, 1.13

The two Authorities to Prospect were numbered 348M (Appeal No.16 of 1973, Statement of Claim paragraphs 11 and 12). The Authority granted by the Minister is Schedule F to the Demurrer in Appeal No.16 of 1973, and the Authority granted by the Governor in Council is contained at the end of that Schedule and adopts with one variation the terms of the Authority granted by the Minister. 40

p.45,1.26 to  
p.56, 1.9



14. The Appellants then proceeded to carry out prospecting and investigations in and in relation to the area subject to the Authorities to Prospect numbered 348M, and in the course of so doing discovered and proved that such area contained large deposits of rutile and zircon and deposits of ilmenite and monazite and other minerals of commercial value which could be worked at great profit (Appeal No.16 of 1973, Statement of Claim paragraphs 16 and 17). They then applied, on 2nd February, 1970 and within the term of the Authorities, for three Special Mineral Leases in respect of such minerals. One of such applications (hereinafter called "SML 324") was in respect of an area part of which was not included within the area subject to the Authorities to Prospect. The remainder of SML 324, some 4760 acres, was within such area. The other two applications (hereinafter called "SML 325" and "SML 326") were entirely within the area subject to the Authorities to Prospect, and consisted of 1060 acres and 930 acres respectively (Appeal No.16 of 1973, Statement of Claim paragraphs 20 and 21). No private land was included in any of the three applications.
15. The applications for SML 324, 325 and 326 were duly heard by the Mining Warden at Gympie (The Mining Acts, ss.100 and 105, regs. 90 and 98), and the Mining Warden reported that such leases should be granted (Appeal No.16 of 1973, Statement of Claim paragraphs 22, 23 and 24).
16. The appellants had complied in every respect with the terms of the Authorities to Prospect, and done all other things necessary to entitle them to the grant to them of SML 325 and SML 326 and to the grant of them of a lease over so much of SML 324 as was within the area subject to the Authorities to Prospect, but the Government refused to grant them any of such leases or leases over any areas contained within SML 324, SML 325 or SML 326, and denied that it had any obligation so to do (Appeal No.16 of 1973,
- p.8, 11.18-26
- p.9, 1.24 to p.10, 1.12
- p.10, 11.13-32
- p.10, 1.33 to p.11, 1.9

Statement of Claim, paragraphs 25 and 26).

17. Accordingly the appellants instituted Action No.931 of 1972 in the Supreme Court of Queensland. In it they claimed specific performance of the contract which they alleged existed to grant them SML 325 and SML 326, and to grant them a lease over so much of SML 324 as was within the area subject to the Authorities, or alternatively \$A12,972,742.00 damages (being their wasted expenses for prospecting and investigations and other matters, and loss of future profits) in lieu of specific performance. They also claimed, further or alternatively, a declaration that they were entitled to the grant to them of SML 325 and SML 326 and to the grant of them of a mining lease for the minerals hereinbefore referred to over such part of SML 324 as was within the area subject to the Authorities to Prospect (Appeal No.16 of 1973, Statement of Claim paragraph 27 and claim (A)). They also alleged that the Government proposed to take the steps necessary to have the land the subject of SML 324, SML 325 and SML 326 declared to be a National Park (in which case no mining lease could be granted over such land because of s.46(1) of The Mining Acts or because of s.44(1) of the Mining Act 1968 as amended) and sought an injunction in that regard in support of their claim for specific performance (Appeal No.16 of 1973, Statement of Claim paragraph 39 and claim (E)). The appellants also pleaded certain other alternative causes of action, and these are dealt with in Part G of this Case.

p.11, 11.10-19  
p.15, 11.1-23

p.14, 11.41-45  
p.15, 11.34-41

Appeal No.17 of 1973

18. This appeal arises out of very similar circumstances. On 27th June, 1966 the appellant Queensland Titanium Mines Pty. Limited was the holder of Authority to Prospect No.199M in respect of an area of approximately 40 square miles in Cooloola and entitled to an extension of the term of that Authority to Prospect (Appeal No.17 of 1973, Statement of

Claim paragraphs 3, 4 and 5, Schedule A to Demurrer). It applied for an extension of that term, and received a reply offering it a new Authority to Prospect over the area then subject to Authority to Prospect No.199M, and this offer was accepted (Appeal No.17 of 1973, Statement of Claim paragraphs 6, 7, 8 and 9 and Schedules B, C and D to Demurrer). Two Authorities to Prospect were again issued. one by the Governor in Council in respect of "reserves" within the area in question, and one by the Minister for Mines in respect of the "Crown land" and "private land" within such area. Each was for a term of four years from 1st July, 1966 and contained terms similar to those contained in the Authorities to Prospect the subject of Appeal No.16 of 1973 (Appeal No.17 of 1973, Statement of Claim paragraphs 10, 11, 12 and 13, Schedule E to Demurrer). Each Authority to Prospect was numbered 363M.

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19. Once again the Government, at the time when its offer to grant the Authorities to Prospect was accepted, knew that the appellant intended, during the term of the Authorities to Prospect, to apply for mineral leases over the areas in question (Appeal No.17 of 1973, Statement of Claim paragraph 17).

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20. The appellant proceeded to carry out prospecting and investigations in and in relation to the area subject to these Authorities to Prospect, and in the course of so doing discovered and proved that such area contained large deposits of rutile and zircon and deposits of ilmenite and monazite and other minerals of commercial value which could be worked at great profit (Appeal No.17 of 1973, Statement of Claim paragraphs 15 and 16). On 2nd February, 1970 which was within the term of such Authorities, the appellant applied for six Special Mineral Leases in respect of such minerals. One of such applications (hereinafter called "SML 329") was in respect of an area part of which was

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p.2/5, 1.31 to  
p.2/6, 1.14  
p.2/21, 1.23 to  
p.2/35, 1.12

p.2/6, 1.15 to  
p.2/7, 1.10

p.2/35, 1.17 to  
p.2/47, 1.30

p.2/7, 1.11 to  
p.2/8, 1.19  
p.2/48, 1.3 to  
p.2/59, 1.17

p.2/8, 1.39 to  
p.2/9, 1.19

p.2/15 11.16-34  
p.2/16 11.4-14

p.2/9, 1.32 to  
p.2/10, 1.16

not subject to the Authorities to Prospect. The remainder of SML 329, some 930 acres, was within such area. The other five applications (hereinafter called "SML 327", "SML 328", "SML 330", "SML 331" and "SML 332") were entirely within the area subject to the Authorities to Prospect, and consisted of 830 acres, 210 acres, 1,180 acres, 260 acres and 590 acres respectively (Appeal No.17 of 1973, Statement of Claim, paragraphs 19 and 20). No private land was included in any of such applications.

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21. The appellant had complied in every respect with the terms of the Authorities to Prospect and had done all other things necessary to entitle it to the grant of SML 327, SML 328, SML 330, SML 331 and SML 332 and to the grant of a lease over so much of SML 329 as was within the area subject to the Authorities to Prospect, but the Government refused to grant to it any of such leases or any leases over any area contained within SML 327, SML 328, SML 329, SML 330, SML 331 and SML 332, and denied that it had any obligation so to do (Appeal No.17 of 1973, Statement of Claim paragraphs 24 and 25).

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p.2/10, 1.39  
to p.2/11, 1.18

22. Accordingly the appellant instituted Action No.930 of 1972 in the Supreme Court of Queensland. The relief claimed in that action was, mutatis mutandis, the same as that claimed in Action 931 of 1972 (paragraph 17 of this Case), the damages sought in lieu of specific performance being \$A14,732,000.00 (Appeal No. 17 of 1973, Statement of Claim, claims (A) and (E)).

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p.2/15, 11.16-34  
to p.2/16, 11.4-14

#### Appeal No.18 of 1973

23. There are some differences in the circumstances giving rise to this appeal. The appellant Cudgen Rutile(No.2) Pty.Ltd. was not the holder of an Authority to Prospect in respect of the area in question prior to the grant to it of the Authority to Prospect the subject of

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- the action. The appellant had, however, applied for the grant of an Authority to Prospect (Appeal No.18 of 1973, Statement of Claim paragraph 3) and the Under-Secretary for Mines replied by letter dated 6th January, 1967 stating that he had been authorized to offer the appellant an Authority to Prospect over the Crown land, private land and reserves in an area of approximately 11½ square miles in Cooloola (Appeal No.18 of 1973, Statement of Claim paragraphs 3 and 4, Schedules A and B to Demurrer). That offer was accepted by the appellant by letter dated 11th January, 1967 (Appeal No.18 of 1973, Statement of Claim paragraph 5, Schedule C to Demurrer.)
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24. After acceptance by the appellant of such offer, an Authority to Prospect was granted to it by the Minister in respect of the Crown lands and private lands within the area the subject of such offer. No Authority to Prospect was granted by the Governor in Council in respect of reserves within such area (Appeal No.18 of 1973, Statement of Claim paragraph 6, Schedule D to Demurrer).
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25. The Authority to Prospect so granted was varied in 1968 by agreement between the Minister for Mines and the appellant (Appeal No.18 of 1973, Statement of Claim paragraphs 9, 10, 11 and 12, Schedules D, E, F and G to Demurrer).
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26. In this case also, the Government, at the time when its offer to grant the Authority to Prospect was accepted, knew that the appellant intended, during the term of the Authority to Prospect, to apply for mineral leases over the area in question (Appeal No.18 of 1973, Statement of Claim paragraph 17).
27. The appellant proceeded to carry out prospecting and investigations in and in relation to the area subject to the Authority to Prospect, and
- p.3/3, 11.15-16
- p.3/3, 1.10 to p. 3/4, 1.7 p.3/21, 1.2 to p.3/32, 1.38 p.3/4, 11.8-12 p.3/33, 1.2 to p.3/34, 1.11
- p.3/4, 11.13-23 p.3/34, 1.13 to p.3/45, 1.5
- p.3/5, 1.20 to p.3/6, 1.24 p.3/43, 1.28 to p.3/49, 1.14
- p.3/7, 1.25 to p.3/8, 1.4

p.3/7, 11.16-24

in the course of so doing discovered and proved that such area contained large deposits of rutile and zircon and deposits of ilmenite and monazite and other minerals of commercial value which could be worked at great profit (Appeal No.18 of 1973, Statement of Claim paragraphs 15 and 16). On 29th January, 1970, which was within the term of the Authority to Prospect, the appellant applied for Special Mineral Lease No.322 (hereinafter called "SML 322") in respect of such minerals. The area of SML 322 was entirely within the area subject to the Authority to Prospect and was 1150 acres (Appeal No.18 of 1973, Statement of Claim paragraphs 19 and 20). No private land was included in such application.

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p.3/8, 11.17-26

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28. The appellant had complied in every respect with the terms of the Authority to Prospect and had done all other things necessary to entitle it to the grant of SML 322, but the Government refused to grant to it SML 322 or to grant to it a lease over any part of the area included within SML 322, and denied that it had any obligation so to do (Appeal No.18 of 1973, Statement of Claim paragraphs 24 and 25).

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p.3/9, 11.5-20

p.20

29. Accordingly the appellant instituted Action No.929 of 1972 in the Supreme Court of Queensland. The relief claimed in that action was, mutatis mutandis, the same as that claimed in Action No.931 of 1972 (paragraph 17 of this Case) and the damages sought in lieu of specific performance were \$A948,390.00 (Appeal No.18 of 1973, Statement of Claim, claims (A) and (E)).

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p.3/12,1.39 to

p.3/13,1.10

p.3/13,11.20-28

PART C - THE GROUNDS OF DEMURRER TO THE PRINCIPAL CAUSES OF ACTION

30. The grounds of the Demurrer to the causes of action referred to in Part B of this Case were in generally similar terms, although there were some minor variations. The grounds of Demurrer in Appeal No.16 of 1973 are set out below, with

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notes indicating the differences which were present in the other cases.

31. Ground 1 of the Demurrer in Appeal No.16 of 1973 was as follows :-

10 "1. No relief can be given in this action against the Defendant except in respect of obligations binding upon the Crown or liabilities incurred by the Crown and the Statement of Claim does not, by reason of the grounds hereinafter set out, allege the existence of any material obligation binding upon the Crown or any material liability incurred by the Crown;" p.17, 11.17-24

Ground 1 of the Demurrer in each of the other Appeals was in the same terms. p.2/17, 11.16-23 p.3/16, 11.14-20

32. Ground 2 of the Demurrer in Appeal No.16 of 1973 was as follows :-

20 "2. The Plaintiffs were not on or after 27th June, 1966 entitled to an extension of the term of Authority to Prospect No.270M as amended for that :- p.17, 11.25-34

(a) the said Authority to Prospect did not in its true construction confer any such entitlement;

(b) The Honourable the Minister for Mines was not, by the issue or amendment of that Authority to Prospect or otherwise, empowered to confer any such entitlement."

30 Ground 2 of the Demurrer in Appeal No.17 of 1973 was in similar terms, with the words and figures "Authority to Prospect No.199M" substituted for the words and figures "Authority to Prospect No.270M". This Ground was not argued in either case, and there was no equivalent ground in Appeal No.18 of 1973. p.2/17, 11.24-33

33. Ground 3 of the Demurrer in Appeal No.16 of 1973 was as follows :-

p.17,1.35 to  
p.18, 1.2

"3. Neither the Mining Acts nor any other Act of the Legislature of Queensland permit the creation of a contractual obligation binding upon the Crown in terms of the letters referred to in paragraphs 8 and 10 of the Statement of Claim."

p.2/17,1.34 to  
p. 2/18, 1.3

Ground 3 of the Demurrer in Appeal No.17 of 1973 was in the same terms, but the words and figures "paragraphs 7 and 9" were substituted for the words and figures "paragraphs 8 and 10". Ground 2 of the Demurrer in Appeal No.18 of 1973 was in the same terms, but the words and figures "paragraphs 3 and 5" were substituted for the words and figures "paragraphs 8 and 10" in the Demurrer in Appeal No.16 of 1973. The letters referred to in each case were the letters of offer and acceptance of the Authorities to Prospect. 20

p.3/16,11.21-25

34. Grounds 4 and 5 of the Demurrer in Appeal No. 16 of 1973 were related and were as follows :-

p.18,11.3-10

"4. No offer as might by acceptance, become binding in contract upon the Crown was made by the letter referred to in paragraph 8 of the Statement of Claim;

5. Neither the letters nor the payment referred to in paragraph 10 of the Statement of Claim created or gave rise to any contractual obligation binding upon the Crown;" 30

p.2/18,11.4-11

In Appeal No.17 of 1973, Grounds 4 and 5 of the Demurrer were in the same terms with the words and figures "paragraph 7" and "paragraph 9" substituted for the words and figures "paragraph 8" and "paragraph 10" respectively. In Appeal No.18 of 1973, Grounds 3 and 4 of the Demurrer were in the same terms with the words and figures "paragraph 3" and "paragraph 5"

p.3/16,11.26-33



substituted for the words and figures "paragraph 8" and "paragraph 10" respectively in the Demurrer in Appeal No.16 of 1973.

35. Ground 6 of the Demurrer in Appeal No.16 of 1973 was as follows :-

"6. The acts of the Under-Secretary for Mines alleged in the Statement of Claim cannot in law give rise to a contract binding upon the Crown in terms of the said letters;" p.18, 11.11-14

10 and Ground 6 of the Demurrer in Appeal No.17 of 1973, and Ground 5 of the Demurrer in Appeal No.18 of 1973 were in the same terms. p.2/18,11.12-15  
p.3/16,11.34-37

36. Ground 7 of the Demurrer in Appeal No.16 of 1973 was as follows :-

20 "7. Upon a true construction of the Authorities to Prospect numbered 348M and in particular of that term alleged in paragraph 19 of the Statement of Claim, the Plaintiffs are not, in the events alleged in the Statement of Claim, entitled to the grant to them of any or all of the special mineral leases applied for by them, nor is the Governor in Council or the Crown acting otherwise through some officer, servant or agent, obliged to grant or cause to be granted to the Plaintiffs any or all of the special mineral leases applied for;" p.18,11.15-25

30 Ground 7 of the Demurrer in Appeal No.17 of 1973 was in the same terms, with the words and figures "Authorities to Prospect numbered 363M" substituted for the words and figures "Authorities to Prospect numbered 348M" and the words and figures "paragraph 18" substituted for the words and figures "paragraph 19". In Appeal No.18 of 1973 the equivalent ground of Demurrer was Ground 10 which was :- p.2/18,11.16-26

"10. Upon a true construction of the Authority to Prospect numbered 409M and in particular of that term alleged in p.3/17,11.17-26

paragraph 18 of the Statement of Claim, the Plaintiff is not, in the events alleged in the Statement of Claim, entitled to the grant to it of a mining lease as applied for by it, nor is the Governor in Council or the Crown acting otherwise through some officer, servant or agent obliged to grant or to cause to be granted to the Plaintiff such a lease;"

37. Ground 8 of the Demurrer in Appeal No.16 of 1973 was as follows :-

p.18, 11.26-43

"8. If, upon a true construction of the said Authorities to Prospect numbered 348M, any provision thereof purports to entitle the Plaintiffs to the grant of a special mineral lease or to oblige the Governor in Council or the Crown acting otherwise through some officer, servant or agent to grant or to cause to be granted to the Plaintiffs any such leases as aforesaid, the said term is void and of no effect for that neither the Mining Acts nor any other Act of the Legislature of Queensland authorise or permit the inclusion in an Authority to Prospect of a term which would oblige the Governor in Council or the Crown acting otherwise through some officer, servant, or agent, in the events pleaded, to grant or to cause to be granted a special mineral lease over the area comprised in the Authority to Prospect or any part thereof;"

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p.2/18, 11.27-44

Ground 8 of the Demurrer in Appeal No.17 of 1973 was in the same terms with the words and figures "Authorities to Prospect 363M" substituted for the words and figures "Authorities to Prospect numbered 348M". The equivalent ground in Appeal No.18 of 1973 was Ground 11 which was as follows :-

p.3/17, 11.27-41

"11. If, upon a true construction of the said Authority to Prospect it purports to entitle the Plaintiff to the grant of a

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10 mining lease or to oblige the Governor in Council or the Crown acting otherwise through some officer, servant or agent to grant or to cause to be granted to the Plaintiff any such lease, the said term is void and of no effect for that neither the Mining Acts nor any other Act of the Legislature of Queensland authorise or permit the inclusion in any Authority to Prospect of a term which would oblige the Governor in Council or the Crown acting otherwise through some officer, servant or agent, in the events pleaded, to grant or to cause to be granted a mining lease over the area comprised in the Authority to Prospect or any part thereof;"

38. Ground 16 of the Demurrer in Appeal No.16 of 1973 was a general ground and was as follows :-

20 "16. The Defendant is not liable to be sued in this action except in respect of an act done by an officer, servant or agent of the Crown who is authorised by law to do acts of the class in question and the Statement of Claim does not allege any act done by such an authorised officer, servant or agent as aforesaid which was not done lawfully and without infringing any rights vested in the Plaintiff;" p.20, 11.32-40

30 Ground 16 of the Demurrer in Appeal No.17 of 1973 and Ground 19 of the Demurrer in Appeal No.18 of 1973 were in the same terms. p.2/20, 11.30-38 p.3/19, 11.32-39

39. No doubt because it was alleged that the Authority to Prospect in Appeal No.18 of 1973 had been varied by consent, the Demurrer in that case included the following additional Grounds :-

40 "6. Neither the Mining Acts nor any other Act of the Legislature of Queensland permit the creation of a contractual obligation binding upon the Crown in terms of the p.3/16, 1.38 to p.3/17, 1.11

letters referred to in paragraphs 10 and 11 of the Statement of Claim;

7. No offer such as might by acceptance become binding in contract upon the Crown was made by the letter referred to in paragraph 10 of the Statement of Claim;
8. The letter referred to in paragraph 11 did not create or give rise to any contractual obligation binding upon the Crown;"

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PART D - THE DECISION OF THE FULL COURT IN  
RELATION TO THE PRINCIPAL CAUSES OF  
ACTION

40. The Demurrers were heard by consent together and each member of the Full Court (Hanger C.J., Stable and Hart JJ.) delivered separate reasons for his judgment allowing the Demurrer.

41. Each member of the Full Court allowed the Demurrer upon the ground that, assuming all other features in favour of the appellants in each case, no concluded agreement for the granting of a lease had been established because the duration of any such lease had not been agreed. Thus Hanger C.J. held that the terms of the suggested contract were too vague and uncertain to be enforceable either by way of specific performance or by way of damages. Stable J. held that, assuming all other features in favour of the appellants, a most material area remained to be agreed, namely the duration of any lease to be granted and Hart J. held that assuming, without deciding, that both the Minister for Mines and the Governor in Council possessed the powers alleged by the appellants there was nothing to indicate the duration of the term of the lease applied for and that this was fatal to the appellants' claims.

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p.2/89, 1.47  
to p.2/90, 1.2

p.2/91, 11.7-18

p.2/97, 11.18-23  
p.2/98, 1.33 to  
p.2/99, 1.33

42. Hanger C.J. also decided against the appellants on various other grounds, many of which depended, it is respectfully submitted, upon an incorrect assumption which he made at the commencement of his reasons for judgment. That assumption was that while the Statements of Claim in the three actions were not identical in all respects, they were identical in matters relevant to his judgment and he then proceeded to base his judgment upon the Statement of Claim in Appeal No.18 of 1973. It is respectfully submitted that Hanger C.J. was not correct in so doing for in Appeal No.18 of 1973 the Authority to Prospect had been issued by the Minister only and no Authority to Prospect had been issued by the Governor in Council. Thus Hanger C.J.'s view that the Minister could not, by the grant of an Authority to Prospect under s.23A of the Act, "fetter the discretion" of the Governor in Council in granting mineral leases under s.30 was (if correct) not applicable to the Authorities to Prospect granted by the Governor in Council himself. p.2/61, 11.12-17 p.2/85, 1.42 to p.2/87, 1.32

43. The other views of Hanger C.J., which related both to questions of pleading and to the questions of substance raised in the Statement of Claim, were :-

(a) that stripped of everything but essentials, the appellants' claims were that they had, in the Authorities to Prospect, contracts with the Minister for Mines to grant a lease, the term of which was not specified and that, by virtue of this contract, the Governor in Council "was bound to grant the lease and for the maximum period allowed by the legislation". p.2/89, 11.30-38

(b) that he doubted whether the Authorities to Prospect could bear the construction put upon them and that there were strong reasons which militated against the Authorities being construed as contracts, p.2/89, 11.38-42

but that he did not decide these questions;

- p.2/89, 11.42-45 (c) that he held that if the Authorities to Prospect contained the terms of contracts, the Minister for Mines had no authority to make such contracts if and in so far as they purported to bind the Crown;
- p.2/89, 11.45-47 (d) that the Authorities to Prospect purported to place fetters upon the discretion of the Governor in Council to grant leases under s.30 of The Mining Acts; 10
- p.2/89, 1.47 to p.2/90, 1.2 (e) that the terms of the suggested contracts were too vague and uncertain to be enforceable either by way of specific performance or by way of damages;
- p.2/90, 11.3-6 (f) that it did not appear against whom the contracts could be enforced, and they certainly could not be enforced against the Governor in Council;
- p.2/74, 11.20-28 (g) that the Statements of Claim did not allege contracts in the usual way, instead referring to letters containing offers and acceptances of offers and making no reference to consideration as such; 20
- p.2/74, 11.28-47 (h) that there was no such legal entity as "the Government" and that the Statements of Claim did not specify the person or body with whom the contracts sued on had been made by the appellants;
- p.2/74, 1.47 to p.2/75, 1.6 (i) that the appellants claimed to be entitled to get a lease or damages for breach of a contract to get a lease, but the only authority which could grant a lease was the Governor in Council and no Order in Council was pleaded whereby the Governor in Council had indicated that he had made any agreement to grant a lease; 30

- 75  
p.2/27, 11.26-7
- (j) that the claims for specific performance were unusual in that they did not specify the other contracting party and did not specify who were to perform the "promises" referred to in such claims.

PART E - THE APPELLANTS' SUBMISSIONS IN RELATION TO THE QUESTIONS OF PLEADING REFERRED TO IN THE REASONS FOR JUDGMENT OF HANGER C.J.

- 10 44. It is convenient to deal initially with the observations of Hanger C.J. as to the form of the Statements of Claim.
- 20 45. It is respectfully submitted that the pleading of the correspondence as, for example, in paragraphs 8 and 10 of the Statement of Claim in Appeal No.16 of 1973 was a perfectly proper way of pleading a contract made by correspondence. Any pleading by way of narrative would have been in very similar terms, and might well have invited a request for particulars. In addition, the Statements of Claim make it apparent that the consideration for the grant of the Authorities to Prospect was :-
- 30 (a) (in the case of Appeals Nos.16 and 17 of 1973) the abandonment by the appellants of their right to a renewal of earlier Authorities to Prospect;
- (b) the payment by them of the necessary deposit and rental;
- (c) the undertaking by them of the other obligations provided for by the Authorities to Prospect.

It is not necessary for the pleading to use the words "contract", "agreement" or "consideration" if the facts which are pleaded establish the existence of a contract and the consideration therefor.

46. The view of Hanger C.J. that there was no such legal entity as "the Government" and that

the Statement of Claim did not specify the person or body with whom the contract sued on had been made is one which, it is respectfully submitted, cannot be reconciled with the terms of The Claims against Government Act. The Act (s.2) allows actions to be brought by :-

"Any person having or deeming himself to have any just claim or demand against the Government."

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The term "the Government" is not defined in that Act, and courts have not previously in dealing with that Act and its equivalents in other Australian States regarded "the Government" as meaning other than the Executive Government (compare Farnell v. Bowman (1887) 12 App.Cas. 643, Theodore v. Duncan (1919) A.C. 696). In Farnell v. Bowman (*supra*) the relief claimed was against "the Government" (see Bowman v. Farnell (1886) 7 N.S.W.L.R.1). The "Government" is the Executive Government of Queensland, that is the Governor acting with the advice of the Executive Council, either personally or through his agents or servants. If the respondent had sought to have further information as to the person or persons alleged to have performed the various acts pleaded, or alleged to have been given any authority to do such acts, particulars of the allegation in question should have been sought. It is sufficient, it is respectfully submitted, to plead that the contracts were made with "the Government".

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47. Hanger C.J.'s view that the Statements of Claim should have pleaded Orders in Council whereby the Governor in Council had indicated that he had made agreements to grant leases is also, it is respectfully submitted, incorrect. Each letter from the Under Secretary for Mines which is pleaded recites that he is authorised to make the offer in question, and it is not necessary to plead conditions precedent (Rules of the Supreme

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Court, Ord. 22, r.12). In addition, in Appeals Nos. 16 and 17 of 1973 where an Authority to Prospect was granted by the Governor in Council, that fact is pleaded, and the Authorities so granted themselves recite the fact of the grant.

p.6, 1.43 to  
p.7, 1.5  
p.2/7, 11.11-16  
p.55, 11.20-29  
p.2/57, 11.25-35

48. Hanger C.J.'s reference to the form of the claim for specific performance, if relevant on demurrer, was not, it is respectfully submitted, correct. Whilst Cooper v. Morgan (1909) 1.Ch. 261 at 262 sets out a form of an order for specific performance, the normal claim for specific performance is simply for "specific performance of the agreement referred to in" a certain paragraph of the Statement of Claim. Where, as here, the only thing that remains to be done under the contract is performance by a defendant of a particular term of an agreement, there is no reason why the plaintiff should not claim merely specific performance of the particular term yet to be performed.

PART F - THE APPELLANTS' SUBMISSIONS IN RELATION TO THE OTHER REASONS FOR JUDGMENT OF THE FULL COURT AND THE GROUNDS OF DEMURRER

49. The appellants' submissions turn on the effect of a clause in similar terms in each of the Authorities to Prospect and they contend that that clause conferred upon them the right to have granted to them mineral leases over such parts of the areas subject to the Authorities to Prospect as they might apply for during the terms of the Authorities to Prospect.
50. That clause was in the following terms (Appeal No.16 of 1973, Schedule F to Demurrer, cl.20, Appeal No.17 of 1973, Schedule E to Demurrer, cl.20, Appeal No. 18 of 1973, Schedule D to Demurrer, cl.20) :-

p.52, 11.8-19  
p.2/55, 11.1-12  
p.3/40, 1.41 to  
p.3/41, 1.7

"20. RIGHT TO ACQUIRE MINING LEASES:

Subject to due performance and observance

and observance of the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Holder to be performed or observed, the Holder shall be entitled at any time and from time to time during the said period to apply for and have granted to him in priority to any other person or company, a mining lease for the minerals specified in clause 5 hereof under the Acts over any part of the lands comprised within this Authority to Prospect." 10

The words "the said period" refer to the term of each Authority to Prospect. As a matter of construction, the clause, it is respectfully submitted, confers on the holder of the Authority to Prospect a right to have granted to him any lease for which he applies over any part of the area subject to the Authority to Prospect, provided that the application is lodged during the term of the Authority to Prospect. The words "in priority to any other person or company" are, it is respectfully submitted, emphatic only and do not mean that the right which cl.20 confers is a right to priority of grant of a lease, if a lease is to be granted. If the right granted by cl.20 were merely a right to priority, the words "at any time and from time to time" would be deprived of effective meaning. The construction of the Act supports this view, it is respectfully submitted, for, because of s.123 of The Mining Acts, no other person could lawfully enter upon and mark out the land as a preliminary to applying for a mining lease over it (s.39(2) and reg.91). 20 30

51. In order to see whether there was power in the Minister for Mines and the Governor in Council to include in the Authorities to Prospect terms having the effect referred to in paragraph 5 of this Case, it is necessary to turn to the provisions of The Mining Acts. 40

52. Those Acts make provision for there to be several different rights pursuant to which persons may explore for or extract minerals on or from Crown lands in Queensland. These are :-

(a) the miner's right;

(b) mining leases, i.e., gold mining leases, special gold mining leases, mineral leases, special mineral leases and dredging leases (definition of "Mining Lease" in s.3); and

(c) authorities to prospect.

Gold mining leases, special gold mining leases and dredging leases are not relevant to these proceedings.

53. The miner's right is a document (ss.11, 12 and 13) entitling the holder, except as against the Crown, to take possession of, mine and occupy "Crown lands" (as defined in s.3) for mining purposes, and any minerals in land so occupied are the property of the holder of such miner's right (ss.15 and 16). The land so occupied is called a "claim" (reg.9) or "area" (see e.g., reg.25). The regulations provide for there to be various types of claims or areas taken up by the holder of a miner's right (regs. 9 to 68K), but there is not, however, provision for the case where the holder wished to carry on prospecting (as distinct from actual mining) over a large area of land, unless he takes up a large number of miner's rights (reg.9) and, subject to any exemptions from labour conditions, works each one with the prescribed number of men (regs. 15, 25, 26 and 28).

54. Mineral leases, however, are the form of title under which mining for minerals other than gold may be carried out. The Mining Acts (s.30) provide for the "Governor" (a term defined in s.3 to mean the Governor with the

advice of the Executive Council) to grant to any person a lease called a mineral lease, of any Crown land other than that specified in s.32 for :-

"mining and all purposes necessary to effectually carry on mining operations therein or thereon for any mineral other than gold;"

and for ancillary purposes connected with such mining. "Mining" is the actual extraction of minerals, as distinct from exploration for them. The term "to mine" is defined in s.3, and its derivatives bear corresponding meanings (Acts Interpretation Act, 1954 as amended, s.32 (e)). 10

55. The only limitation on the power of the Governor in Council to grant a mineral lease is that the power is expressed to be "subject to the provisions of this Act and the Regulations". Those limitations are of two kinds, namely :- 20

(a) as to the terms of any lease he may grant; and

(b) the imposing of an obligation upon him to consider applications for leases made by persons who have complied with the steps prescribed by the Act and Regulations for the making of such applications.

56. The Mining Acts provide for various restrictions upon the provisions of any lease which may be granted. For example, s.33(2) limits the duration of any lease, and the area and rent are provided for by s.33(4)(b) and s.33(1) respectively. If the Governor in Council purported to grant a lease containing terms prohibited by the Acts, such a lease would semble not be valid (The Queen v. Hughes (1886) L.R. I. P.C.81 at 92). S.39(2) also provides that applications for mining leases by persons who have complied with the Regulations shall 30 40

take priority according to the order in which they are made.

57. There are other provisions which place upon a person who applies for a mining lease various obligations as to the steps which he must take in order to have his application considered by the Governor in Council (s.39(1), regs. 90, 91, 92, 93, 94, 95 and 97), but these provisions are, it is respectfully submitted, merely terms which regulate the way in which offers to lease land for mining purposes are to be made to the Governor in Council. A person who has not complied with those terms cannot insist upon his application being considered by the Governor in Council, but those terms may be waived by the Governor in Council (compare reg. 91(4) and Deep Creek Gold Dredging Company v. Gympie Quartz Crushing Battery Company (1898) 8 Q.L.J. 131 at 135, Murphy v. Ramsay (1954) 111 C.L.R. 344 at 349, Osborne v. Morgan (1888) 13 App. Cas. 227 at 234).
58. The only way in which a person who seeks to obtain a mineral lease can insist upon his application being considered by the Governor in Council is by his following out the forms and procedures provided for by the regulations, but there is nothing in The Mining Acts to prohibit the Governor in Council from entering into negotiations for a contract of lease with any person, for the Governor in Council may contract to give a lease and may contract by a lease (O'Keefe v. Williams (1910) 11 C.L.R. 171 at e.g., 207 per Isaacs J., Minister for Mines v. Harney (1901) A.C. 347). If some third person wishes to obtain a lease over the same land, that person could by applying in accordance with the procedures set out in The Mining Acts and Regulations thereunder compel the Governor in Council to consider his application but the Governor in Council would not be obliged to grant it.

59. It is submitted that the Governor in Council can lawfully grant a lease to an applicant who has not complied with all the formalities prescribed by the Acts and Regulations. If the Governor in Council could not grant a lease unless the applicant had complied with all those formalities, some strange situations would arise. For example, an applicant might make an application for a lease which covered only the best part of a deposit, but the Governor in Council might consider it desirable for the whole of the deposit to be mined. The Governor in Council might well refuse to grant the application made by the applicant, but make a counter offer to the applicant of a lease covering the whole deposit. In such a case the applicant would not have made an application for the area the subject of the counter offer in accordance with the Acts and Regulations. If, however, he accepted the counter offer made by the Governor in Council then it is submitted that there would be a contract between the Crown and the applicant to grant the lease the subject of the counter offer. Again, if an applicant applied for a lease of certain land for a period of 21 years, but the Governor in Council was only prepared to grant the lease for 10 years, then the acceptance by the applicant of the counter offer made by the Governor in Council would, it is submitted, amount to a contract to grant the lease.
60. The grounds of Demurrer and the reasons for judgment of Hanger C.J. assume that the power of the Governor in Council to grant a mineral lease is a discretion, the exercise of which cannot be fettered, and that such discretion must remain unfettered until the moment of its exercise. Such a view is, it is respectfully submitted, inconsistent with the decision of the Judicial Committee in Minister of Mines v. Harney (1901) A.C. 347 and is not a correct analysis of the nature of the power conferred by s.30. That power is simply a power to enter into a contract, and not a

discretion of the relevant kind.

61. There is, it is respectfully submitted, no reason why the Governor in Council cannot contract to grant a mineral lease as part of the ordinary day to day activities of Government in Queensland. In particular, there is no reason why such a contract should not be in the form of the Authorities to Prospect in these proceedings.

10 62. The Mining Acts were amended by The Mining Act Amendment Act of 1930 to provide, by the insertion of s.23A, for the grant of Authorities to Prospect over Crown lands. Prior to that amendment, persons who sought to obtain prospecting rights over large areas but who did not wish to be obliged to spread their labour force over that area in order to comply with the labour conditions applicable to areas held pursuant to miner's rights had made special agreements with the Government, and those agreements had been ratified by legislation. The Acts ratifying those agreements were :-

(a) The Mining Trust Limited Agreement Ratification Act of 1929;

(b) The Palmer Development Coy. Limited Ratification Act of 1930;

30 (c) The Commonwealth Mines Preliminary Syndicate Limited Agreement Ratification Act of 1930;

(d) The Alexander Macdonald Mining Agreement Ratification Act of 1930.

and the agreements in each case gave to the miner or mining company the sole and exclusive right to obtain mining leases over the lands referred to therein. One of these Acts (namely The Palmer Development Coy. Limited Ratification Act of 1930) was assented to on the same day as The Mining Act Amendment Act

of 1930 (18th December, 1930). The Commonwealth Mines Preliminary Syndicate Agreement Ratification Act of 1930 and The Alexander Macdonald Mining Agreement Ratification Act of 1930 were not assented to until 30th December, 1930 but had otherwise passed through Parliament before that date. The 1930 amending Act followed the report of a Royal Commission held that year into The Mining Acts, 1898 as amended. 10

63. S.23A of The Mining Acts empowers the Minister (a term defined in s.3 to mean the Secretary for Mines or other Minister for the time being charged with the administration of the Act) to grant to any person an Authority to Prospect over any Crown lands and provides, it is respectfully submitted, no limitations upon the provisions which may be contained in any Authority which he may grant. The power given to the Minister is, it is respectfully submitted, 20 wide enough to include terms entitling the holder of the Authority to Prospect to obtain leases over any part of the area subject to the Authority, and s.23A(3) lends support to such a view. The Legislature has, by s.23A(1), appointed the Minister as the person to deal on behalf of the Crown with Crown land and given him powers to contract on behalf of the Crown that leases will in certain circumstances be granted. 30

64. The power of the Governor in Council to grant an Authority to Prospect over a reserve was conferred by s.46(1)(b) of the Acts, which was substituted for the previous s.46 by The Mining Acts Amendment Act of 1965. A "reserve", as defined in s.3, includes land which is :-

"...exempted for the time being by this Act or otherwise, wholly or in part, from entry or occupation for mining purposes." 40

It was a fact agreed at the hearing of the Demurrers that at all times there was in



respect of each of the areas subject to the Authorities to Prospect in question a Proclamation made by the Governor in Council under s.23(2) exempting the land from the operation of the provisions of the Act which conferred upon the holder of a miner's right or business licence the right to take possession of and occupy the lands in question. If, then, the lands were "reserves" in this sense, it was the Governor in Council who made the relevant contracts, and the observation of Hanger C.J. that the Minister could not fetter the discretion of the Governor in Council was not, it is respectfully submitted, apposite in the cases of Appeals Nos. 16 and 17 of 1973.

p.2/87, 11.29-32

65. The appellants therefore respectfully submit:-

(a) that the Governor in Council has power to contract to grant a mineral lease, whether it be an ordinary mineral lease or a special mineral lease;

(b) but the Minister under s.23A and the Governor in Council under s.46 have power to include in Authorities to Prospect terms entitling the holder to obtain mineral leases or special mineral leases over the areas subject to the Authorities to Prospect; and

(c) that the terms of cl.20 of each Authority to Prospect in question in these Appeals were so framed as to confer upon the holders an exclusive right to obtain leases over the areas subject to the Authorities, provided that they applied for such leases during the term of the Authorities.

If the appellants are right in these contentions, it is necessary then to consider whether the terms of any proposed lease were described with sufficient certainty. In this regard the appellants respectfully submit :-

p.9, 11.24-34  
p.2/9, 11.32-44  
p.3/8, 11.17-22

(i) that the meaning of clause 20 of each Authority to Prospect was that the Government had agreed to grant to the appellants leases for any term not exceeding 21 years as they might apply for, and their applications specified the terms sought by them (Schedule to reg.90, Appeal No. 16 of 1973, Statement of Claim, paragraph 20; Appeal No. 17 of 1973, Statement of Claim, paragraph 19, Appeal No.18 of 1973, Statement of Claim paragraph 19),

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(ii) alternatively, that bearing in mind the circumstances existing at the time of the making of the contract to grant the Authorities to Prospect and the terms thereof, the term was to be a reasonable term in the light of the size and location of the deposits of mineral proved by the appellants to exist.

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PART G - ALTERNATIVE CAUSES OF ACTION

66. The appellants in each action also pleaded certain alternative causes of action, namely:-

p.5, 1.15 to p.6, 1.37 (a) a cause of action in contract for damages  
p.11, 11.20-37 for breach of a warranty whereby the  
p.12, 1.6 to p.12, 1.43 Government warranted that it had power  
p.15, 11.24-26 to grant or cause to be granted and would  
p.2/5, 1.24 to p.2/7, 1.10 grant or cause to be granted to the  
p.2/11, 11.29/45 appellants an Authority to Prospect under  
p.2/12, 1.17 to p.2/13, 1.9 The Mining Acts in accordance with the  
p.2/15, 11.35-37 terms contained in the draft documents  
p.3/3, 1.1 to p.3/4, 1.2 attached to the letters offering them  
p.3/5, 1.25 to p.3/6, 1.17 the Authorities in question; (Appeal No.16  
p.3/9, 1.30 to p.3/10, 1.3 of 1973, Statement of Claim, paragraphs 1  
p.3/10, 1.20 to p.3/11, 1.9 to 9 inclusive, 28(a)(i), 28(b), 29, 30  
p.3/13, 11.11-13 and paragraph (B) of the relief claimed;  
Appeal No.17 of 1973, Statement of Claim,  
paragraphs 1 to 9 inclusive, 27(a)(i),  
27(b), 28, 29 and paragraph (B) of the  
relief claimed; Appeal No.18 of 1973,  
Statement of Claim, paragraphs 1 to 3  
inclusive, 10, 11, 27(a)(i), 27(b), 28,  
29 and paragraph (B) of the relief claimed)

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- (b) a cause of action in contract for damages for breach of warranty whereby the Government warranted that it had power to grant or cause to be granted and would grant or cause to be granted to the appellants the right to have granted to them a mining lease for the minerals specified in the draft documents attached to the letters offering them the Authorities to Prospect in question; (Appeal No. 16 of 1973, Statement of Claim, paragraphs 1 to 9 inclusive, 28(a)(ii), 28(b), 29, 31 and paragraph (C) of the relief claimed; Appeal No.17 of 1973, Statement of Claim, paragraphs 1 to 9 inclusive, 27(a)(ii), 27(b), 28, 30 and paragraph (C) of the relief claimed; Appeal No.18 of 1973, Statement of Claim, paragraphs 1 to 3 inclusive 10, 11, 27(a) (ii), 27(b), 28, 30 and paragraph (C) of the claim for relief).)
- p.5,1.15 to p.6,1.37
- p.11,11.20-29  
p.11,1.38 to p.12, 1.38
- p.12,1.44 to p.13,1.4  
p.15,11.27-29  
p.2/5,1.24 to p.2/7,1.10  
p.2/11,11.29-39  
p.2/12,1.40 to p.2/13,1.4  
p.2/13, 11.10-14  
p.2/15, 11.38-40  
p.3/3,1.1 to p.3/4,1.2.  
p.3/5,1.25 to p.3/6,1.17  
p.3/9, 11.30-40  
p.3/10,1.4 to p.3/11,1.4  
p.3/11, 11.10-14  
p.3/13, 11.14-16.
- (c) a cause of action in contract for damages for breach of a warranty contained in the Authorities to Prospect whereby the Government warranted that it was empowered to grant or cause to be granted and would grant or cause to be granted the right to have granted to them a mining lease for the minerals referred to in such Authorities to Prospect over any part of the lands referred to in such Authorities to Prospect: (Appeal No.16 of 1973, Statement of Claim, paragraphs 1 to 9 inclusive, 32 to 36 inclusive and paragraph (D) of the relief claimed; Appeal No.17 of 1973, Statement of Claim, paragraphs 1 to 9 inclusive, 31 to 35 inclusive and paragraph (D) of the relief claimed; Appeal No.18 of 1973, Statement of Claim, paragraphs 1 to 3 inclusive, 10,11, 31 to 35 inclusive, paragraph (D) of the relief claimed).)
- p.5,1.15 to p.6,1.37
- p.13,1.5 to p.14,1.26  
p.15, 11.30-32
- p.2/5,1.24 to p.2/7,1.10  
p.2/13,1.45 to p.2/14,1.39  
p.2/16,11.1-3
- p.3/3,1.1 to p.3/4,1.2.  
p.3/5,1.25 to p.3/6,1.17  
p.3/11,1.15 to p.3/12,1.34  
p.3/13, 11.17-19.

PART H - THE GROUNDS OF DEMURRER TO THE ALTERNATIVE CAUSES OF ACTION

67. The respondent demurred to the alternative causes of action pleaded in the Statements of Claim on several grounds.

68. Ground 9 of the Demurrer in Appeal No. 16 of 1973 was in the following terms :-

p.18,1.44 to  
p.19, 1.5

"The letter referred to in paragraph 28 of the Statement of Claim does not constitute and is not capable of constituting an agreement between the Plaintiffs and the Crown, and upon the true construction of the said letter, no warranty was given by the Crown to the Plaintiffs either in the terms alleged in sub-paragraph (a) of paragraph 28 of the Statement of Claim or at all;"

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p.2/19,11.1-8  
p.3/17,1.42  
to p.3/18,1.3

Ground 9 of the Demurrer in Appeal No.17 of 1973 and Ground 12 of the Demurrer in Appeal No.18 of 1973 were in the same terms with the figure "27" substituted for the figure "28".

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69. Ground 10 of the Demurrer in Appeal No.16 of 1973 was in the following terms :-

p.19,11.6-10

"The acts of the Under Secretary for Mines alleged in the Statement of Claim cannot in law give rise to a warranty in terms of the letter dated the 27th day of July, 1966 referred to in paragraph 27 of the Statement of Claim;"

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p.2/19,11.9-13

Ground 10 of the Demurrer in Appeal No.17 of 1973 was in the same terms and Ground 13 of the Demurrer in Appeal No.18 of 1973 was in the following terms :-

p.3/18,11.4-15

"(a) The acts of the Under Secretary for Mines alleged in the Statement of Claim cannot in law give rise to a warranty in terms of the letter dated the 6th day of January, 1967 referred to in paragraph 27

of the Statement of Claim;

(b) The acts of the Acting Under Secretary for Mines alleged in the Statement of Claim cannot in law give rise to a warranty in terms of the letter dated the 30th day of April, 1968 referred to in paragraph 27 of the Statement of Claim;"

70. Ground 11 of the Demurrer in Appeal No.16 of 1973 was in the following terms :-

10      "(a) The Crown has no power to warrant the nature or the extent of the power vested by law in it or in an officer servant or agent of the Crown;      p.19,11.11-19

(b) No officer, servant or agent of the Crown has the Crown's authority to warrant the nature or the extent of the power vested by law in it or in an officer servant or agent of the Crown;"

20      Ground 11 of the Demurrer in Appeal No.17 of 1973 and Ground 14 of the Demurrer in Appeal No.18 of 1973 were in the same terms.      p.2/19, 11.14-22  
p.3/18, 11.16-24

71. Ground 12 of the Demurrer in Appeal No.16 of 1973 was in the following terms :-

"(a) The Crown has no power to warrant manner in which it will exercise any power vested by law in it or in any officer servant or agent of the Crown to grant or to cause to be granted an Authority to Prospect;      p.19,11.20-32

30      (b) No officer, servant or agent of the Crown has the Crown's authority to warrant the manner in which it or any officer servant or agent of the Crown will exercise any power vested by law in it or in any officer servant or agent of the Crown to grant or to cause to be granted an Authority to Prospect;"

p.2/19, 11.23-37  
p.3/18, 11.25-38

Ground 12 of the Demurrer in Appeal No.17 of 1973 and Ground 15 of the Demurrer in Appeal No.18 of 1973 were in the same terms.

72. Ground 13 of the Demurrer in Appeal No.16 of 1973 was in the following terms :-

p.19, 1.33 to  
p.20, 1.3

"(a) The Crown has no power to warrant the manner in which it or any officer servant or agent of the Crown will exercise any power vested by law in it to grant or to cause to be granted any such right as is referred to either in paragraphs 28(a)(ii) or paragraph 34 of the Statement of Claim;

10

(b) No officer, servant or agent of the Crown has the Crown's authority to warrant the manner in which it or any officer servant or agent of the Crown will exercise any power vested by law in it or in any officer servant or agent of the Crown to grant or to cause to be granted any such right as is referred to either in paragraph 28(a)(ii) or paragraph 34 of the Statement of Claim;"

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p.2/19, 1.38 to  
p.2/20, 1.10  
p.3/18, 1.39 to  
p.3/19, 1.12

Ground 13 of the Demurrer in Appeal No.17 of 1973 and Ground 16 of the Demurrer in Appeal No.18 of 1973 were in the same terms with the figures "27(a)(ii)" and "33" substituted for "28(a)(ii)" and "34" respectively.

73. Ground 14 of the Demurrer in Appeal No.16 of 1973 was in the following terms :-

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p.20, 11.13-19

"Upon a true construction of the Authorities to Prospect (numbered 348M) referred to in paragraph 32 of the Statement of Claim, no warranty was given by the Crown, the Minister or by the Crown acting through some other officer, servant or agent to the Plaintiffs in the terms alleged in paragraph 34 of the Statement of Claim;"

Ground 14 of the Demurrer in Appeal No.17 of 1973 was in similar terms with the figures "363M", "31" and "33" substituted for the figures "348M", "32" and "34" respectively. Ground 17 of the Demurrer in Appeal No.18 of 1973 was in the following terms :-

p.2/20,11.11-17

10 "Upon a true construction of the Authority to Prospect (numbered 409M) referred to in paragraph 31 of the Statement of Claim, no warranty was given by the Crown, the Minister or by the Crown acting through some other officer, servant or agent to the Plaintiff in the terms alleged in paragraph 33 of the Statement of Claim;"

p.3/19,11.13-19

PART I - THE APPELLANTS' SUBMISSIONS IN RELATION TO THE ALTERNATIVE CAUSES OF ACTION

20 74. The appellants respectfully submit that the facts pleaded give rise to warranties by the Government as to its power to contract to deal with the lands in question in the terms of the offers to grant Authorities to Prospect made by the Government and accepted by the appellants. The appellants submit that if, at the time when the contractual promises made by the Government come to be fulfilled, the Government is unable to fulfil them because it was not empowered to make them, and has not thereafter acquired such power, 30 it is liable in damages, though of course the promises cannot be specifically enforced.

PART J - THE REASONS OF APPEAL

75. The appellants respectfully submit that the orders and judgments of the Full Court were wrong and ought to be reversed, and that these Appeals ought to be allowed with costs for the following, amongst other, reasons :-

- (a) the Full Court was wrong in holding that the Statements of Claim did not disclose any causes of action by the appellants against the respondent;
- (b) the Full Court was wrong in holding that the Statements of Claim did not plead concluded agreements between the appellants and the Government of Queensland;
- (c) there was no substance in the grounds of the Demurrers pleaded by the respondent.

10

DATED this                      day of                      1974.

C. E. K. HAMPSON Q.C.

D. F. JACKSON



ON APPEAL  
FROM THE FULL COURT OF THE SUPREME COURT OF  
QUEENSLAND

B E T W E E N:

CUDGEN RUTILE (NO.2) PTY. LTD. (First Plaintiff)  
QUEENSLAND TITANIUM MINES PTY. LIMITED (Second Plaintiff)  
Appellants

- and -

GORDON WILLIAM WESLEY CHAIK (Defendant)  
Respondent

ON APPEAL  
FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N:

QUEENSLAND TITANIUM MINES PTY. LIMITED (Plaintiff)  
Appellant

- and -

GORDON WILLIAM WESLEY CHAIK (Defendant)  
Respondent

ON APPEAL  
FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N:

CUDGEN RUTILE (NO.2) PTY. LTD. (Plaintiff)  
Appellant

- and -

GORDON WILLIAM WESLEY CHAIK (Defendant)  
Respondent

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