

Co. v. Hunt (1917), 39 O.L.R. 85; also (with discrimination) by the Second Divisional Court in Burton v. Hookwith (1919), 45 O.L.R. 348; and also by the Appellate Division in Alberta in Canadian Western Foundry and Supply Co. v. Hoover (1917), 37 D.L.R. 285.

The stipulation that the work should be done to the entire satisfaction of the owner differs somewhat from what is demanded when a third person is to be the judge. In each case, however, there must be the element of reasonable conduct; and here there was no evidence of a desire to be reasonable upon the part of the owner, but rather the reverse. The provision as to satisfaction, as expressed, refers only to additional items. See Dallman v. King (1837), 4 Bing. N.C. 105.

*Appeal dismissed with costs.*

FIRST DIVISIONAL COURT.

JANUARY 31st, 1921.

**\*RE MCINTYRE PORCUPINE MINES LIMITED AND MORGAN.**

*Assessment and Taxes—Mining Companies—Exemptions—“Concentrators”—Assessment Act, R.S.O. 1914 ch. 195, sec. 40 (4)—Income Tax—Business Tax not Imposed—Mining Tax Act, R.S.O. 1914 ch. 26, secs. 5, 14—Sub-secs. 6 and 9 of sec. 40.*

Appeals by Charles B. Morgan and Charles V. Gallagher from orders of the Ontario Railway and Municipal Board of the 28th May, 1920, allowing appeals from orders of the Junior Judge of the District Court of the District of Temiskaming, and setting aside assessments of the McIntyre Porcupine Mines and five other mining companies by the Municipal Corporation of the Township of Tisdale (confirmed by the Court of Revision), and declaring that the mines of these companies were not assessable.

The appeals were heard by MEREDITH, C.J.O., MAGEE, HODGINS, and FERGUSON, J.J.A.

McGregor Young, K.C., for the appellants.

J. Y. Murdoch, for the Schumacher Gold Mines, respondents.

R. S. Robertson, for the other mining companies, respondents.

MEREDITH, C.J.O., in a written judgment, said that the main question for decision was as to the meaning of sub-sec. 4 of sec. 40