

Province of British Columbia.

SUPREME COURT.

Irving, J.]

[Oct. 28, 1903.

BYRON N. WHITE CO. v. SANDON WATER AND LIGHT CO.

Act of incorporation—Taking possession—Consent—Laches—Injunction not proper remedy.

The defendants were an incorporated company for the purpose of supplying water and electric light for the town of Sandon. They went to plaintiffs' property and erected dams, flumes and tanks for water power purposes. The manager, the men and local officers of the plaintiffs passed by from day to day the works of the defendants on such grounds without objection being taken. The act of incorporation authorized the defendants to go upon the lands of all persons for the purpose of their works after they had complied with s. 9, as follows: "but the powers (other than the powers to enter, survey, and set out and ascertain what parts thereof are necessary for the purposes aforesaid or for making the plans hereinafter mentioned) conferred by this section shall not be exercised or proceeded with until the plans and sites of the said works have been approved by the Lieutenant-Governor in Council." This sanction the defendants did not obtain until March 25, 1902, but prior to this action being commenced. Sec. 13 of the act of incorporation further provided for the ascertaining by arbitration of the amount of all damage done.

Held, notwithstanding the above provision as to taking possession, that the defendants did take possession of the property in dispute in the fall of 1897 and erected an electric light plant to supply the town of Sandon with light, and that no objection was taken by plaintiffs until the spring of 1902. "And further that I think the plaintiffs were guilty of laches, having stood by and permitted the defendants to incur expense. It is quite apparent that what the plaintiffs wish to do is to remove the defendants off their ground in order to take advantage of its favourable situation. An injunction cannot be granted because the defendants are now in a position by virtue of the permission obtained from the Lieutenant-Governor in Council to take possession of that property. Since the 25th of March they are rightfully in possession of this property. The plaintiffs should have appointed an arbitrator under the provision of the defendants' act, and in that way have determined the value of the property taken from them." Action dismissed with costs.

John Elliott and R. S. Lennie for plaintiffs. *S. S. Taylor, K.C.*, for defendants.