

So that while the Crown continued to hold the legal title the beneficial interest in the land as royal mines and minerals, producing or capable of producing revenue, passed to Canada. And being so held for the beneficial use of Canada, they passed by s. 109 of the British North America Act to Ontario by force of site."

In *Lyddall v. Weston* (1739) 2 Atk. 19, a case between vendor and purchaser where there was a reservation in a grant of the estate in question by the Crown of tin, lead and all royal mines within the premises, the Lord Chancellor (Hardwicke) in giving judgment against the purchaser who objected to the title said there was "no instance where the Crown has only a bare reservation of royal mines without any right of entry that it can grant a license to any person to come upon any man's estate and dig up his soil and search for such mines: I am of opinion that there is no such power in the Crown, likewise that by the royal prerogative of mines there is no such power." In referring to this statement the Master of the Rolls (Sir Wm. Grant) in *Seaman v. Vawdry* (1810) 16 Ves. 380, said, at p. 393: "That position is liable to considerable doubt as being inconsistent with the resolutions of the judges in the case of *Mines in Plowden*." (Plowd. 310, see p. 336.)

In the precious metals case *Attorney-General of British Columbia v. Attorney-General of Canada* (1889) 14 App. Cas. 295, Lord Watson said, at p. 302: "In the *Mines Case* (1 Plowd. 336, 336a) all the Justices and Barons agreed that all mines of gold and silver within the realm whether they be in the land of the Queen or of subjects belong to the Queen by prerogative with liberty to dig and carry away the ores thereof and such other incidents thereto as are necessary to be used for the getting of the ore"(a).

The earliest mining legislation in this country dealt only with these precious metals. The first statute dealing with the subject was the Gold Mining Act, c. 164 (27 & 28 Vict. c. 9) and dealt

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(a) See also *Esquimalt and Nanaimo Railway Co. v. Bainbridge* (1896) App. Cas. 561.