

Province of British Columbia.

SUPREME COURT.

Full Court.]

ROGERS v. REED.

[Jan. 9.]

Practice—Security for costs of appeal—How application should be made.

Motion to the full Court at Victoria on 8th January, 1900, for security for costs of appeal from an order under Order XIV.

The application was remitted to Chambers, the court holding that applications for security for costs of appeal to the full Court should be made to a judge in Chambers and not to the full Court.

Full Court.]

[Jan. 15.]

ATTORNEY-GENERAL FOR BRITISH COLUMBIA AND THE NEW VANCOUVER COAL MINING CO. v. ESQUIMALT AND NANAIMO RAILWAY COMPANY.

Crown, prerogative of—Right of Attorney-General to injunction to restrain action—Public harbour.

Appeal from injunction order. On 27th January, 1898, the defendants brought an action against the New Vancouver Coal Mining and Land Company, Limited, for a declaration that they were entitled to the coal under the sea opposite the lands known as the Newcastle Townsite Reserve, claiming them under letters patent from the Dominion dated the 21st of April, 1897. The action was ready for trial and on 5th September, 1899, the Attorney-General for British Columbia and the coal company commenced this present action against the Esquimalt and Nanaimo Railway for a declaration that the right of coal under the foreshore and opposite to Newcastle Townsite Reserve was vested in the Crown in right of the province, and for an injunction to restrain the defendants from further prosecuting their action against the coal company. On the application of the Attorney-General the Chief Justice made an order restraining the further prosecution of the action against the coal company until the determination of this action.

Held, on appeal (MARTIN, J., dissenting), that the order was properly made.

The Supreme Court of British Columbia has all the powers of the Exchequer Court in England, and all the machinery necessary for the exercise thereof.

Per MARTIN, J.: The Crown in right of the Province of British Columbia has no interest in the property in litigation, and is not entitled to exercise any prerogative in relation thereto.

The minerals under the waters and bed of Nanaimo harbour at the time of the Crown grant of 21st April, 1887, were the property of the Dominion. Appeal dismissed.

Bodwell, Q.C., and Duff, for appellants. Davis, Q.C., for respondent.