

## Province of British Columbia.

### COURT OF APPEAL.

Macdonald, C.J.A., Martin, Galliher,  
McPhillips, and Eberts, J.J.A.]

[April 2, 1918.]

ALBERNI LAND CO. v. REGISTRAR-GENERAL OF TITLES.

*Deed—Reservations and exceptions—Easements—Registration.*

Reservations in a conveyance of land of "all coal, coal oil, petroleum, etc., within, upon or under the same" are exceptions and reservations from the grant and not easements, and should not be registered as charges. A certificate of indefeasible title may issue subject to these reservations, a memorandum of which should be endorsed on the certificate.

The incorporeal rights, such as rights of entry and rights of way, are easements, and not subject to reservation, but if they are easements of necessity incidental to the getting of the minerals there is no need to register them as a charge.

*H. A. Maclean*, K.C., for appellant; *C. J. Gwynne*, for respondent.

ANNOTATION ON ABOVE FROM 40 D.L.R. 144.

#### PROFITS À PRENDRE.

A *profit à prendre* is a right to enter upon the land of another and take some profit of the soil, such as minerals, oil, stones, trees, turf, fish or game. The right to take water is not a *profit à prendre*, but an easement, *Race v. Ward*, 4 E. & B. 702, 119 E.R. 259.

A *profit à prendre* differs from an easement in this, that an easement entitles the dominant owner to enter his neighbour's land and make some use of it, while a *profit à prendre* entitles the owner of it to take some profit from the soil. It differs also in this, that an easement must be appurtenant to some land other than that over which the easement exists. In other words, there must be a dominant tenement to which the easement is appurtenant, whereas a *profit à prendre* may exist in gross, that is, as a separate inheritance, enjoyed independently of the ownership of any land, *Shuttleworth v. Le Fleming*, 19 C.B.N.S. 637; *Welcome v. Upton*, 6 M. & W. 536; *Barrington's Case*, 8 Rep. 136.

It differs also from the ownership of the soil. Thus, a grant of all the coal or other mineral in or upon certain land, is a grant of part of the land itself, and passes complete ownership in the mineral to the grantee. But a grant of the right to enter, search for and dig coal, and carry away as much as may be dug, is a grant of an incorporeal right to enter and dig, and passes