

63, 1936

In the Privy Council.

No. 12 of 1936.

**ON APPEAL FROM THE COURT OF APPEAL
FOR BRITISH COLUMBIA.**

IN THE MATTER OF THE COMPANIES ACT

AND

IN THE MATTER OF PIONEER GOLD MINES LIMITED
(IN LIQUIDATION)

BETWEEN

VERNON LLOYD-OWEN - - - - - (*Petitioner*) *Appellant*

AND

ALFRED E. BULL, J. DUFF-STUART, R. B. BOUCHER,
F. J. NICHOLSON AND HELEN A. WALLBRIDGE
AND D. S. WALLBRIDGE, EXECUTORS AND TRUSTEES
OF THE ESTATE OF ADAM H. WALLBRIDGE DECEASED *Respondents*

AND

JOHN S. SALTER, LIQUIDATOR OF PIONEER GOLD MINES
LIMITED (IN LIQUIDATION) - - - - - (*Petitioner*) *Respondent.*

RECORD OF PROCEEDINGS.

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ON APPEAL FROM THE COURT OF APPEAL
FOR BRITISH COLUMBIA.

IN THE MATTER OF THE COMPANIES ACT

AND

IN THE MATTER OF PIONEER GOLD MINES LIMITED
(IN LIQUIDATION)

BETWEEN

VERNON LLOYD-OWEN - - - - - (*Petitioner*) *Appellant*

AND

ALFRED E. BULL, J. DUFF-STUART, R. B. BOUCHER,
F. J. NICHOLSON AND HELEN A. WALLBRIDGE
AND D. S. WALLBRIDGE, EXECUTORS AND TRUSTEES
OF THE ESTATE OF ADAM H. WALLBRIDGE DECEASED *Respondents*

AND

JOHN S. SALTER, LIQUIDATOR OF PIONEER GOLD MINES
LIMITED (IN LIQUIDATION) - - - - - (*Petitioner*) *Respondent.*

RECORD OF PROCEEDINGS.

No. 1.

Petition of Vernon Lloyd-Owen (*Appellant*) and J. S. Salter (*Liquidator*).

*In the
Supreme
Court of
British
Columbia.*

TO THE CHIEF JUSTICE OR ANY OTHER JUDGE OF THE SUPREME COURT OF
BRITISH COLUMBIA.

The PETITION of VERNON LLOYD-OWEN and JOHN S. SALTER.
humbly sheweth that

No. 1.
Petition of
Vernon
Lloyd-
Owen
(*Appellant*)
and J. S.
Salter
(*Liquida-
tor*),
13th March,
1935.

1. Your Petitioner, Vernon Lloyd-Owen, is a Lumberman and resides at 1565 Harwood Street, in the City of Vancouver, Province of British Columbia.
- 10 2. Your Petitioner, John S. Salter, is an Accountant and resides at 601 West 22nd Avenue, in the City of Vancouver, Province of British Columbia and is the Liquidator of Pioneer Gold Mines Limited (In Liquidation).

*In the
Supreme
Court of
British
Columbia.*

No. 1.
Petition of
Vernon
Lloyd-
Owen
(Appellant)
and J. S.
Salter
(Liquidator),
13th March,
1935—con-
tinued.

3. Your Petitioner, Vernon Lloyd-Owen, is a member of Pioneer Gold Mines Limited (In Liquidation) and is the registered holder of 10,580 shares in the capital stock of the said Company, No. 470,003 to 480,002 and 479,423 to 480,002 inclusive.

4. By order of this Honourable Court dated the 11th day of July, 1933, and made upon Petition presented to this Court through the Vancouver Registry as No. 426/33 the dissolution of Pioneer Gold Mines Limited (In Liquidation) was declared to have been void and the time for final dissolution of the Company was extended until the 20th day of May, 1936, subject to the further order of the Court. 10

5. In an action in the Supreme Court of British Columbia, No. F 891/32, one Andrew Ferguson as Plaintiff sued Alfred E. Bull, J. Duff-Stuart, R. B. Boucher, Francis J. Nicholson and the Executors and Trustees of the Estate of Adam H. Wallbridge (all of whom are hereinafter referred to for convenience as the "Wallbridge Syndicate") together with Your Petitioner, John S. Salter, as Liquidator of Pioneer Gold Mines Limited (In Liquidation).

6. The Judgment in the said action was appealed by the Plaintiff to the Court of Appeal and thence to the Judicial Committee of the Privy Council. The Petitioners will, on the hearing of this Petition crave leave 20 to refer to the Reasons of the said Judicial Committee.

7. It appears from the said Reasons that in the opinion of their Lordships the Plaintiff Ferguson was not nor was any other minority shareholder in Pioneer Gold Mines Limited (In Liquidation) competent to bring a minority shareholders' action to recover from majority shareholders or directors assets allegedly belonging to the Company. Their Lordships indicated that such action after the commencement of voluntary liquidation, can be taken only in the name of the Company.

8. 51% of the issued share capital of Pioneer Gold Mines Limited (In Liquidation) is controlled by the Wallbridge Syndicate and Your 30 Petitioner, Vernon Lloyd-Owen, believes that an appeal to the Company in general meeting to authorise the Liquidator to commence an action in the name of the Company against the members of the said Syndicate to recover property of the Company wrongfully diverted by them to their own use, would be futile.

9. Your Petitioner, Vernon Lloyd-Owen, has requested his co-Petitioner to take action in the name of the Company against the members of the said Syndicate but the co-Petitioner declines to take any action without the directions of the Court.

10. Your Petitioner, Vernon Lloyd-Owen, as a member of the said 40 Company, is desirous that appropriate proceedings be taken in the Company's name for the vindication of the Company's rights with respect to the matters complained of in the action aforesaid, which are set out in extenso in the

Reasons of the Privy Council, and for such other relief against the said parties or others as Counsel may advise.

11. Your Petitioner, John S. Salter, as Liquidator of the Company in voluntary liquidation has, at the request of the said Lloyd-Owen, joined in this Petition for conformity with the provisions of the "Companies Act" and for the purpose of obtaining such directions as the Court may see fit to give and Your Petitioner as such Liquidator, submits himself to the directions and orders of the Court.

WHEREFORE YOUR PETITIONERS PRAY :

10 For directions in relation to the course to be followed by the Liquidator in the premises.

YOUR PETITIONER, VERNON LLOYD-OWEN, PRAYS :

(a) For an Order that the Liquidator of Pioneer Gold Mines Limited (In Liquidation) be directed to take action forthwith in the name of the Company against such persons as Counsel may advise and without limiting the generality of the foregoing, against Alfred E. Bull, J. Duff-Stuart, R. B. Boucher, F. J. Nicholson, Helen A. Wallbridge and the Executors and Trustees of the Estates of Adam H. Wallbridge and Lewis K. Wallbridge, or any of them, for the recovery of all property and assets of the Company which may be alleged to have been wrongfully acquired by the proposed Defendants, or any of them, and without limiting the generality of the foregoing, for the following relief :

1. For a Declaration that the profit on an Agreement dated January 21st, 1925, and allegedly made between the Company and the members of the Wallbridge Syndicate, was and is the property of the Company.
2. For a Declaration that 800,000 shares in Pioneer Gold Mines of B. C. Limited and all dividends thereon acquired and/or received by the members of the Wallbridge Syndicate, were and are the property of the Company.
- 30 3. For all necessary and incidental orders to compel the proposed Defendants to restore to the Company all such monies and properties, together with interest, or
4. In the alternative, to compel the proposed Defendants to contribute such sum or sums to the assets of the Company by way of compensation in respect to the matters complained of as the Court may think just, and
5. For orders for the interim preservation of the subject matter of the litigation, and
6. For such further and other relief as may be available to the Company.

(b) In the alternative Your Petitioner, Vernon Lloyd-Owen, prays that
40 he be granted leave to bring action in the Company's name to obtain relief

*In the
Supreme
Court of
British
Columbia.*

No. 1.
Petition of
Vernon
Lloyd-
Owen
(Appellant)
and J. S.
Salter
(Liquida-
tor),
13th March,
1935—*con-
tinued.*

*In the
Supreme
Court of
British
Columbia.*

as aforesaid on the Company's account for vindication of the Company's rights.

AND YOUR PETITIONERS, as in duty bound, will ever pray, etc.
Dated at Vancouver, B.C., this 13th day of March, 1935.

No. 1.
Petition of
Vernon
Lloyd-
Owen
(Appellant)
and J. S.
Salter
(Liquidator),
13th March,
1935—*con-
tinued.*

VERNON LLOYD-OWEN,
Per Ian A. Shaw
His Solicitor.

JOHN S. SALTER, Liquidator of
Pioneer Gold Mines Limited
(In Liquidation),
Per Chas. W. St. John
His Solicitor.

10

This Petition was filed on behalf of the Petitioner, Vernon Lloyd-Owen, by Ian A. Shaw, whose place of business and address for service is Room 201, Inns of Court Building 678 Howe Street, Vancouver B. C., and on behalf of the Petitioner, John S. Salter, by his Solicitor, C. W. St. John, whose place of business and address for service is Suite 422, 744 Hastings Street West, Vancouver, B.C.

It is proposed to serve this Petition on such persons as the Court may direct.

20

No. 2.
Affidavit of
Vernon
Lloyd-
Owen in
support of
Petition,
13th March,
1935.

No. 2.

Affidavit of Vernon Lloyd-Owen in support of Petition.

I, VERNON LLOYD-OWEN, of 1565 Harwood Street, in the City of Vancouver, Province of British Columbia, Lumberman, make oath and say as follows :—

1. That I have read the Petition herein dated the 13th day of March, 1935, and say that such of the facts therein set forth as are within my own knowledge are true and such of the facts therein set forth as are not within my own knowledge are true to the best of my information and belief.

2. That now produced and shown to me and marked Exhibit "A" to this my Affidavit is a copy of the Reasons of the Judicial Committee of the Privy Council in the case of *Ferguson vs. Wallbridge et al* referred to in the Petition. 30

3. That now produced and shown to me and marked Exhibit "B" to this my Affidavit is a copy of the Order of the Supreme Court of British Columbia dated the 11th day of July, 1933, and referred to in Paragraph 4 of the said Petition.

4. That I am fully familiar with the said case, having attended the trial of the action, having perused all the Exhibits and having read the

Record filed by the Appellant Ferguson on his appeal to the Privy Council and I say that all material facts as alleged by the Appellant in that case and as set out in the Privy Council Judgment are true to the best of my knowledge, information and belief and were proven in the said action and in any new action can be fully substantiated by evidence.

5. That on or about the 28th day of February, 1935, I requested the Liquidator of Pioneer Gold Mines Limited (In Liquidation) to take appropriate proceedings in the name of the Company against various parties for the vindication of the Company's rights and caused to be delivered to
 10 the said Salter a request in writing, a copy of which is now produced and shown to me and marked Exhibit "C" to this my Affidavit.

Sworn before me at the City of Vancouver,
 Province of British Columbia, this 13th
 day of March, 1935,

F. R. ANDERSON,
 A Commissioner for taking
 Affidavits within British Columbia.

*In the
 Supreme
 Court of
 British
 Columbia.*

No. 2.
 Affidavit of
 Vernon
 Lloyd-
 Owen in
 support of
 Petition,
 13th March,
 1935—con-
 tinued.

VERNON LLOYD-OWEN.

No. 3.

Order of Mr. Justice Murphy deferring hearing of Petition.

20 BEFORE THE HONOURABLE MR. JUSTICE MURPHY.

Thursday, the 14th day of March, 1935.

The Petition of Vernon Lloyd-Owen and John S. Salter, having this day come on for hearing; upon reading the Petition herein dated the 13th day of March, 1935, and the Affidavit of Vernon Lloyd-Owen sworn herein the 13th day of March, 1935, and filed, and the Exhibits therein referred to: and upon hearing Mr. C. W. St. John of Counsel for the Liquidator of Pioneer Gold Mines Limited (In Liquidation) and Mr. J. A. MacInnes of Counsel for the Petitioner, Vernon Lloyd-Owen, and the Court, being of
 30 the opinion that the further hearing of the Petition should be deferred until notice thereof has been given to those persons who were Defendants in the recently concluded litigation of Ferguson vs. Wallbridge et al:

THIS COURT DOTH ORDER that the hearing of the Petition herein be adjourned until Thursday, the 28th day of March, 1935.

AND THIS COURT DOTH FURTHER ORDER that the Petition herein and Affidavit in support, together with Notice of Hearing, be served upon the following parties at least four days before the date of the adjourned hearing, namely: Alfred E. Bull, J. Duff-Stuart, R. B. Boucher, F. J. Nicholson, Helen A. Wallbridge and D. S. Wallbridge, Executors and Trustees of the Estate of Adam H. Wallbridge, deceased.

No. 3.
 Order of
 Mr. Justice
 Murphy
 deferring
 hearing of
 Petition,
 14th March,
 1935.

*In the
Supreme
Court of
British
Columbia.*

LIBERTY to the Petitioners to apply for further directions as to service in the event of there being any difficulty in effecting service upon any of the said parties within the time limited as aforesaid.

AND THIS COURT DOTH FURTHER ORDER that service be effected as soon as reasonably possible.

No. 3.
Order of
Mr. Justice
Murphy
deferring
hearing of
Petition,
14th March,
1935—con-
tinued.

AND THIS COURT DOTH FURTHER ORDER that a copy of this Order be served upon each of the said parties at the time of service of the Petition herein.

By the Court

H. BROWN

Dep. District Registrar.

10

No. 4.
Affidavit of
Alfred E.
Bull,
27th March,
1935.

No. 4.

Affidavit of Alfred E. Bull.

I, ALFRED EDWIN BULL of the City of Vancouver in the Province of British Columbia, Barrister-at-Law, make oath and say as follows:—

1. I have read the Petition of Vernon Lloyd-Owen, and John S. Salter, dated the 13th day of March 1935 and filed herein, and I am the Alfred E. Bull referred to therein. The said Petitioner Vernon Lloyd-Owen took an active interest in and assisted the Plaintiff Andrew Ferguson and his solicitor in prosecuting the said action of Andrew Ferguson against myself and the other Defendants referred to in paragraph 5 of the said Petition. The said Vernon Lloyd-Owen several times attended at my office and the office of Thomas Edgar Wilson, Solicitor for the Defendant Gen. J. Duff-Stuart, Dr. R. B. Boucher, Francis J. Nicholson and myself and spent many hours in said office with Mr. Ian Shaw, solicitor for the said Plaintiff Andrew Ferguson, perusing and examining many of the papers and documents produced by and on behalf of the said Defendants in the said action. 20

2. The said Vernon Lloyd-Owen attended the trial of the said Ferguson action and also attended at the hearing of the Appeal in the said action by the Judicial Committee of the Privy Council in London, England. 30

3. That now produced to me and marked exhibit "A" to this my affidavit is a true copy of extracts from the transcript of the proceedings made by public stenographers on the hearing of the said appeal by the Judicial Committee of the Privy Council from the time it commenced on the 16th day of July until the end of Appellant Counsel's argument on the 23rd day of July 1934.

4. That during the hearing of the Argument of Counsel for the Appellant Ferguson as set out in the transcript produced as exhibit "A" the legal

question, " that a minority shareholder in Pioneer Gold Mines, Limited, in liquidation, was not competent to bring the said action, but that such action could only have been taken in the name of the said Company," had not been raised or mentioned and the said legal question was not mentioned or raised before the Judicial Committee of the Privy Council until the Counsel for the Appellant had completed his argument.

5. That the costs of the Defendants, other than Salter, in the said Ferguson action down to and including the trial were taxed on the 4th day of May 1933 and allowed at \$3151.80 and the costs of the said Defendants
 10 in the Appeal to the Court of Appeal in June and July 1933 were taxed at \$1353.10 and the costs of the Defendants in the said action and the said appeal to the Judicial Committee of the Privy Council were taxed and allowed at £1262. 7s. 10d., equalling \$6109.98 Canadian funds at the present rate of exchange of \$4.84 to the Pound Sterling, making total taxed costs payable to the Defendants of \$10,614.88, for which the Defendants have judgments against the Plaintiff in the said Ferguson action and none of the said costs have been paid, except \$200.00 received as the security deposited on account of the Defendants' costs of the Appeal to the Court of Appeal and £500 deposited as security for the costs of the Defendants in the
 20 Appeal to the Judicial Committee of the Privy Council.

6. I am informed by Mr. C. W. St. John, Solicitor for the Defendant Salter and verily believe that the said Salter's costs of the action and appeal to the Court of Appeal, although not yet taxed, will amount to over \$2200.00.

7. The solicitor and client costs paid by the Defendants in defending the said Ferguson action amounted to over \$50,000.00.

8. Now produced to me and marked exhibit " B " to this my affidavit is the Record in the said Ferguson action in the Appeal to the Judicial Committee of the Privy Council.

30 Sworn before me at the City
 of Vancouver, in the Province
 of British Columbia this 27th
 day of March A.D. 1935.

A. E. BULL

E. R. YOUNG

A Commissioner for taking Affidavits
 within British Columbia.

*In the
 Supreme
 Court of
 British
 Columbia.*

No. 4.
 Affidavit of
 Alfred E.
 Bull,
 27th March,
 1935--con-
 tinued.

*In the
Supreme
Court of
British
Columbia.*

No. 5.

Affidavit of Charles W. St. John.

I, Charles William St. John, solicitor, of the City of Vancouver, Province of British Columbia, make oath and say as follows :—

No. 5.
Affidavit of
Charles W.
St. John,
28th March,
1935.

1. That I am a solicitor for John Sutherland Salter, the liquidator of the said Pioneer Gold Mines Limited (In Liquidation).

2. Now produced and shown to me and marked Exhibit " A " to this my affidavit is a letter dated the 28th day of February, 1935, from Lawrence & Shaw to the said John S. Salter. The said Exhibit " A " was delivered to me by the said John Sutherland Salter as his solicitor in this matter. 10

3. Now produced and shown to me and marked Exhibit " B " to this my affidavit is a letter dated the 26th day of February, 1935, from one Vernon Lloyd-Owen. The said Exhibit " B " was delivered to me by the said John Sutherland Salter as his solicitor.

4. Now produced and shown to me and marked Exhibit " C " to this my affidavit is a letter dated the 12th day of March, 1935, addressed to and received by me from J. W. DeB. Farris, K.C.

5. I am informed by the said John Sutherland Salter and verily believe that he, as liquidator of the said Pioneer Gold Mines Limited (In Liquidation) has distributed all of the assets of the said Company, excepting the moneys, if any, recoverable by the Company in these proceedings, amongst the creditors and shareholders of the said Company as required by law and that therefore he has now, with the exception aforesaid, no assets of the said Company in his hands. 20

Sworn before me at the City
of Vancouver, Province of
British Columbia, this 28th } CHAS. W. ST. JOHN
day of March, 1935.

John E. Baird

30

A Commissioner for taking Affidavits
within British Columbia.

No. 6.
Order of
Mr. Justice
Murphy,
28th March,
1935.

No. 6.

Order of Mr. Justice Murphy.

Thursday the 28th day of March A.D. 1935.

Before the Honourable Mr. JUSTICE MURPHY.

The Petition of Vernon Lloyd-Owen and John S. Salter having come on for hearing on the 14th day of March, 1935, and having been adjourned, and directions having been given for service of the said Petition, and it

having come on for hearing this day in the presence of Mr. C. W. St. John of Counsel for the said John S. Salter, Liquidator of Pioneer Gold Mines Limited (In Liquidation) Mr. J. A. MacInnes of Counsel for the Petitioner Vernon Lloyd-Owen, and Mr. J. W. deB. Farris, K.C., of Counsel for Alfred E. Bull, J. Duff-Stuart, R. B. Boucher, F. J. Nicholson and Helen A. Wallbridge and D. S. Wallbridge Executors and Trustees of the Estate of Adam H. Wallbridge, deceased :

And upon reading the Petition herein dated the 13th day of March 1935; the affidavit of Vernon Lloyd-Owen sworn herein the 13th day of
 10 March 1935 and the exhibits therein referred to; the Order for directions made herein the 14th day of March 1935; the Notice of Hearing of said Petition dated the 14th day of March 1935; the affidavit of Alfred Edwin Bull sworn herein the 27th day of March 1935 and the exhibits therein referred to and the affidavit of Charles William St. John sworn herein the 28th day of March 1935 and the exhibits therein referred to

THIS COURT DOTH ORDER AND DIRECT that no action be taken by the Liquidator of Pioneer Gold Mines Limited (In Liquidation) in the name of the Company or otherwise by said Liquidator against Alfred E. Bull, J. Duff-Stuart, R. B. Boucher, F. J. Nicholson and Helen A. Wallbridge
 20 and D. S. Wallbridge, Executors and Trustees of the Estate of Adam H. Wallbridge, deceased, or any of them, for the recovery of or otherwise in respect of any property or assets of the Company which may be alleged to have been wrongfully acquired by them, or for any other relief as set out in the said Petition.

AND THIS COURT DOTH FURTHER ORDER AND DIRECT that leave be and it is hereby refused to the Petitioner Vernon Lloyd-Owen to bring action in the Company's name against the said Alfred E. Bull, J. Duff-Stuart, R. B. Boucher, F. J. Nicholson and Helen A. Wallbridge and D. S. Wallbridge, Executors and Trustees of the Estate of Adam H. Wallbridge,
 30 deceased, or any of them, to obtain relief as prayed for in the said Petition, or otherwise on the Company's account for vindication of the Company's rights.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Petition herein be dismissed.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the said Alfred E. Bull, J. Duff-Stuart, R. B. Boucher, F. J. Nicholson and Helen A. Wallbridge and D. S. Wallbridge, Executors and Trustees of the Estate of Adam H. Wallbridge deceased, recover their costs of and incidental to this Petition from the said Petitioner Vernon Lloyd-Owen.

40

By the Court

J. F. MATHER

District Registrar.

*In the
 Supreme
 Court of
 British
 Columbia.*

No. 6.
 Order of
 Mr. Justice
 Murphy,
 28th March,
 1935—con-
 tinued.

*In the
Supreme
Court of
British
Columbia.*

No. 7.
Notice of
Appeal,
11th April,
1935.

No. 7.

Notice of Appeal.

Notice is hereby given that the Petitioner, Vernon Lloyd-Owen intends to appeal and doth hereby appeal to the Court of Appeal from the Order of the Supreme Court of British Columbia made on the Petition of Vernon Lloyd-Owen and John S. Salter by the Honourable Mr. Justice Murphy on Thursday, the 28th day of March, 1935, whereby and wherein the Petition insofar as the prayer of Vernon Lloyd-Owen was concerned, was dismissed and whereby no directions or orders were given to the co-Petitioner, John S. Salter, Liquidator of Pioneer Gold Mines Limited (In liquidation). 10

Notice is further given that the said appeal will be set down to come on for hearing at the sittings of the Court of Appeal to be holden on the 4th day of June, 1935, at the Court House in the City of Victoria at the hour of 11 o'clock in the forenoon or so soon thereafter as Counsel may be heard or for such earlier special sitting of the Court of Appeal and either in the City of Victoria or the City of Vancouver as the Court of Appeal on the application of the Appellant may by order permit.

The grounds of appeal are the following :

1. The said Order is against the law and the evidence and the weight 20 of the evidence.

2. The learned Judge should have directed the Liquidator of Pioneer Gold Mines Limited (In Liquidation) to take action forthwith in the name of the Company against such persons as Counsel might advise for the recovery of all the property and assets of the Company which might be alleged to have been wrongfully acquired by any person and more specifically for the relief prayed for in clause (a) of the Petition herein.

3. In the alternative, the learned Judge erred in not granting to the Petitioner, Vernon Lloyd-Owen, leave to bring action in the Company's name to obtain relief as aforesaid on the Company's account for vindication 30 of the Company's rights in the manner referred to in the said Petition.

4. The learned Judge erred in his interpretation and construction of the Reasons for Judgment of the Judicial Committee of the Privy Council in the case of *Ferguson vs. Wallbridge et al*, which said Reasons were part of the material before him upon the hearing of the Petition in the following particulars :

(a) The learned Judge erred in deciding that Pioneer Gold Mines Limited (In Liquidation) by reason of the said Judgment should not be allowed to plead fraud, actual or constructive.

(b) The learned Judge erred in holding that the Company had 40 no maintainable cause of action in respect to the facts set out in the aforesaid Reasons of the Judicial Committee.

5. The learned Judge erred in admitting in evidence the contents of the Record filed in the Privy Council in an action of *Ferguson vs. Wallbridge*.

6. The learned Judge erred in assuming that the Record in the action of *Ferguson vs. Wallbridge* contained any evidence or the only evidence available to the Company in the action proposed to be brought.

7. The learned Judge erred in admitting in evidence a document purporting to be extracts from a transcript of the argument of Counsel for one Andrew Ferguson on his appeal to the Privy Council in the action of *Ferguson vs. Wallbridge*.

8. The learned Judge erred in purporting to determine before trial and without any evidence issues of law and fact which could only properly
10 be determined in an action instituted for that purpose.

9. The learned trial judge found as a fact and erred in so finding in the absence of evidence that the Liquidator of Pioneer Gold Mines Limited sold all of the assets of the Company to certain persons under Agreement dated the 21st day of January, 1925.

10. The learned Judge found and erred in so finding that all of the Company's rights against the alleged purchasers, including therein the right of action herein sought to be maintained, were barred by reason of the said Agreement of the 21st day of January, 1925.

11. All findings of fact by the learned Judge were and are premature.

20 12. The learned Judge erred in purporting to decide the Company's rights without considering all of the evidence which might be adduced in a new action.

13. The learned Judge erred in refusing to allow any charges of fraud to be made by the Company in the absence of specific evidence of such fraud being presented to him at the hearing of the Petition herein.

14. The Appellant will rely upon such further and other grounds of appeal as Counsel may advise.

Dated at Vancouver, B.C., this 11th day of April, 1935.

IAN A. SHAW

Solicitor for the Petitioner :

30

To : Alfred E. Bull,
J. Duff-Stuart,
R. B. Boucher,
F. J. Nicholson, and
the Executors and Trustees
of the Estate of Adam H. Wallbridge.

And to John S. Salter
Liquidator of Pioneer
Gold Mines Limited (In
40 Liquidation).

*In the
Supreme
Court of
British
Columbia.*

—
No. 7.
Notice of
Appeal,
11th April,
1935—con-
tinued.

*In the
Court of
Appeal.*

No. 8.

Reasons for Judgment.

No. 8.
Reasons for
Judgment,
16th July,
1935.
(A)
McPhillips,
J.A.

(A) McPHILLIPS, J. A. : This appeal is one from the judgment and order of Murphy, J. upon the petition of Vernon Lloyd-Owen and John S. Salter, Liquidator of the Pioneer Gold Mines Limited (In Liquidation). The order taken out reads as follows :—

“ THIS COURT DOTH ORDER AND DIRECT that no action be taken by the Liquidator of Pioneer Gold Mines Limited (In Liquidation) in the name of the Company or otherwise by said Liquidator against Alfred E. Bull, J. Duff Stuart, R. B. Boucher, F. J. Nicholson and Helen A. Wallbridge and D. S. Wallbridge, Executors and Trustees of the Estate of Adam H. Wallbridge, deceased or any of them, for the recovery of or otherwise in respect of any property or assets of the Company which may be alleged to have been wrongfully acquired by them, or for any other relief as set out in the said Petition. 10

AND THIS COURT DOTH FURTHER ORDER AND DIRECT that leave be and it is hereby refused to the Petitioner Vernon Lloyd-Owen to bring action in the Company’s name against the said Alfred E. Bull, J. Duff Stuart, R. B. Boucher, F. J. Nicholson and Helen A. Wallbridge and D. S. Wallbridge, Executors and Trustees of the Estate of Adam H. Wallbridge, deceased, or any of them, to obtain relief as prayed for in the said Petition, or otherwise on the Company’s account for vindication of the Company’s rights. 20

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Petition herein be dismissed.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the said Alfred E. Bull, J. Duff Stuart, R. B. Boucher, F. J. Nicholson and Helen A. Wallbridge and D. S. Wallbridge, Executors and Trustees of the Estate of Adam H. Wallbridge, deceased recover their costs of and incidental to this Petition from the said Petitioner Vernon Lloyd-Owen. 30

By the Court
J. F. MATHER
District Registrar.

J.F.M.
D.R.
D.M. J.

Entered
Apr. 30, 1935
Order Book, Vol. 93, Fol. 237
Per A.L.R.

J.A.M. 40
C.W. St. J.
Checked
E.P.O’C.’’

The Liquidator did not appeal but through Counsel it was stated that the Liquidator would abide by any order the Court would make—that is

submitted to any order that the Court might make in the appeal and, in my opinion, that gives jurisdiction to the Court to proceed and the Liquidator will be bound by the ultimate decision in the matter upon appeal to this Court on any further appeal had or taken. I have arrived at the conclusion that the learned Judge in the Court below was wholly wrong in making the order he did. I dissented in the *Ferguson v. Wallbridge et al* case (47 B.C.R. 529) which later went on appeal to the Privy Council and the judgment of their Lordships of the Privy Council was delivered by Lord Blanesburgh—in that judgment the appeal was dismissed—but it
 10 went off on the ground of the want of proper parties being before the Court and because of the allegation of fraud and conspiracy not being withdrawn—the Company was in liquidation and the Liquidator was not before the Court—there was no disposition of the appeal upon the merits at all. The judgment as delivered by Lord Blanesburgh is in its nature, if I may be permitted to so state, a classic as defining the rights of the shareholders of a company where there has been a failure of directors to properly discharge their fiduciary duty and the right to order that any moneys derived from any disposition of the properties of the Company must be accounted for and brought into the treasury of the Company. It is unthinkable to my
 20 mind to construe that judgment as being a holding that the final Court of Appeal has finally determined that the shareholders are without any possibility of relief. Here we have a large shareholder, who is desirous of having the question determined within the provisions of the Companies Act (of British Columbia) practically in the same terms as the Companies Act (Imperial). If that was the intended judgment of their lordships of the Privy Council—why was the elaborate judgment given by their lordships of the Privy Council indicating the legal rights of shareholders where the properties of a company are sold and other disposition made of them and the moneys obtained therefor not accounted for but appropriated by
 30 the directors and retained by them as well as by certain shareholders of the Company. Lord Blanesburgh took great pains and in a most illuminative way pointed out what were the needed steps. It is only necessary to read the judgment of their Lordships of the Privy Council (reported in (1935) 1 Western Weekly Reports at pp. 673 to 692 inclusive) and see there pointedly indicated that the proceedings may be rightly taken under sec. 234 of the British Columbia Companies Act (R.S.B.C. Cap. 38-1924) The Petitioner herein was, in my opinion, rightly entitled to proceed as he did and the Liquidator joined in the petition—therefore everything was done in form yet the learned Judge refused to make the order which, in
 40 my opinion, and with great respect to the learned Judge, it was incumbent upon him to make—so that no injustice would be done—that is the Petitioner should be entitled to have the matter adjudicated upon and that no miscarriage of justice should take place. It was stated upon the appeal before this Court—that an offer was made to the Liquidator and the assurance given that the Liquidator would be indemnified against all costs that he would incur or be liable for. In view of this what possible obstacle was in the way of the learned Judge making the desired order? It would seem

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J.A.—con-
tinued.

to have been advanced by Counsel opposed to any such order as desired being made that the decision in the Privy Council in the *Ferguson v. Wallbridge* case was conclusive and decisive of the Petitioner's claim and counsel at this Bar in this appeal made the same submission—a most untenable contention. As I read the judgment of the Privy Council—all that was dealt with, besides the want of proper parties, were the charges of conspiracy and fraud—charges wholly unessential for success in a properly constituted action. It will be observed that in the Privy Council in the judgment as delivered by Lord Blanesburgh it was stated that the case advanced in *Ferguson v. Wallbridge* was of the class so well defined in the case of *Cook v. Deeks* [1916] 1 A.C. 554. There it was a case of breach of trust by the directors and constituted them trustees of all the benefits derived on behalf of the Company—that the benefit of the contract belonged in equity to the Company and the directors could not validly use their voting powers to vest it in themselves and the present case is of a similar nature. I was a dissenting member of the Court of Appeal in the *Ferguson v. Wallbridge* case and I was greatly surprised to note that counsel before their lordships of the Privy Council—advanced the contention of charges of conspiracy and fraud—as I distinctly remember that those charges were abandoned before the Court of Appeal and I came to my conclusion and wrote my judgment in the full belief that they were abandoned. It will be seen upon reference to my judgment 47 B.C.R. 529 that I deal with the matter as being one of a breach of a fiduciary duty and cited a judgment of Lord Herschell (*Bray v. Ford*) [1896] A.C. 44 at p. 51 where Lord Herschell said :

“ It is an inflexible rule of a Court of Equity that a person in a fiduciary position, such as the respondent's is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interests and duty conflict. It does not appear to me that this rule is, as has been said, founded upon principles of morality. I regard it rather as based on the consideration that, human nature being what it is, there is danger, in such circumstances, of the person holding a fiduciary position being swayed by interest rather than by duty, and thus prejudicing those whom he was bound to protect.”

I traversed the questions of law so completely—as I think—in my judgment above referred to—I do not think that it is necessary to further deal with them. The judgment of their lordships of the Privy Council—as delivered by Lord Blanesburgh—in the *Ferguson v. Wallbridge* case is in no way in conflict with my dissenting judgment in the case in this Court—in truth is in complete alliance with it upon the question of law.

With the most careful attention to all the considerations advanced in this appeal I unhesitatingly am of the opinion that the *Ferguson v. Wallbridge* case and the decision of the Privy Council therein in no way constitutes a bar but in fact supports and authorizes the relief asked here. It is plain that the interest of justice requires that the relief as prayed for

in the Petition be granted and that the Liquidator be ordered and directed and do proceed with all due diligence in taking the necessary proceedings for the recovery of or otherwise in respect of any property or assets of the Company which may be shown to have been wrongfully acquired by the directors or shareholders and unaccounted for to the Company, being the property of the Company or derivable from shares received in the later Company incorporated in similar name in payment for property and assets of the Company alleged to be wrongfully appropriated by the directors and leave be granted to bring action in the Company's name against

10 Alfred E. Bull, J. Duff Stuart, R. B. Boucher, F. J. Nicholson and Helen A. Wallbridge and D. S. Wallbridge, Executors and Trustees of the Estate of Adam H. Wallbridge, deceased or any of them to obtain relief as prayed for in the Petition or otherwise on the Company's account for vindication of the Company's rights.

I would, therefore, allow the appeal.

Victoria, B.C.

16th July, 1935.

A. E. McPHILLIPS,

J.A.

(B) MACDONALD, J.A. :—The question is whether or not under (B) sec. 218 of the Companies Act we should in the interests of justice make Macdonald, J.A. the order sought by the Appellant. It is only if the Court thinks it just that such an order should be made. Mr. Justice Murphy in his discretion refused to do so. We in reviewing that decision have the advantage of full knowledge of the case from earlier contact with it. While part of the judgment of the Judicial Committee may be obiter, I would, if I found therein, as Mr. MacInnes suggests, an intimation that leave to bring a new action should be given, be greatly influenced thereby and govern myself accordingly. I cannot, however, read the Board's decision in that way. We should only allow this appeal if in our opinion, with fraud in all its phases eliminated, a new plaintiff on legal grounds, apart from fraud,

30 would have a reasonable chance of success. In view of all that occurred; my own opinion as expressed at the time; and the further study of the case in the light of the argument presented to us, the proposed new action, could not, in my judgment, possibly succeed and that being so it is not just that the respondents should be subjected to the cost and inconvenience involved in contesting it.

I would dismiss the appeal.

Victoria, B.C.,

16th July, 1935.

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Court of
Appeal.*

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Judgment,
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1935.
(A)
McPhillips,
J.A.—*con-
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*In the
Court of
Appeal.*

No. 9.

Formal Judgment.

No. 9.
Formal
Judgment,
17th July,
1935.

COURT OF APPEAL

IN THE MATTER OF THE " COMPANIES ACT "

and

IN THE MATTER OF PIONEER GOLD MINES LIMITED (IN LIQUIDATION)

VERNON LLOYD-OWEN - - - - - *Petitioner*
(Appellant)

and

JOHN S. SALTER, Liquidator of Pioneer Gold Mines Limited **10**
(In Liquidation) - - - - - *Petitioner*

and

ALFRED E. BULL, J. DUFF-STUART, R. B. BOUCHER, F. J.
NICHOLSON, HELEN A. WALLBRIDGE and D. S. WALL-
BRIDGE, Executors and Trustees of the Estate of ADAM
H. WALLBRIDGE, deceased - - - - - *Respondents.*

Coram :

THE HONOURABLE MR. JUSTICE MARTIN
THE HONOURABLE MR. JUSTICE MCPHILLIPS
THE HONOURABLE MR. JUSTICE MACDONALD **20**
THE HONOURABLE MR. JUSTICE MCQUARRIE

Victoria, B.C. the 17th day of July 1935.

This Appeal from the judgment of the Honourable Mr. Justice Murphy of the Supreme Court of British Columbia, pronounced on the 28th day of March A.D. 1935 coming on for hearing on the 14th, 17th, 18th and 19th days of June A.D. 1935; and upon hearing Mr. J. A. MacInnes and Mr. Ian Shaw of Counsel for the Petitioner (Appellant) Vernon Lloyd Owen; and Mr. J. W. deB. Farris, K.C. of Counsel for the Respondents, Alfred E. Bull, J. Duff Stuart, R. B. Boucher, F. J. Nicholson, Helen A. Wallbridge and D. S. Wallbridge, Executors and Trustees of the estate of Adam H. Wall- **30**
bridge, deceased; and upon reading the Appeal Book herein, and Judgment being reserved until this day :

This Court doth order and adjudge that the said Appeal be and the same is hereby dismissed, and that the said Petitioner (Appellant) do pay to the said Respondents their costs of this Appeal forthwith after taxation thereof.

By the Court

OSWALD BARTON
Deputy Registrar.

No. 10.**Appellant's Notice of Motion for leave to appeal.***In the
Court of
Appeal.*

Take notice that a Motion will be made to the Court of Appeal on behalf of the above-named Appellant at a special sitting of the said Court to be holden at the Court House, at the City of Victoria, Province of British Columbia, on Monday, the 5th day of August, A.D. 1935 at the hour of 11 o'clock in the forenoon or so soon thereafter as Counsel can be heard for an Order granting leave to the Appellant to appeal to the Supreme Court of Canada from the Judgment of the Court of Appeal pronounced
 10 on the 17th day of July, 1935 dismissing the Appeal of the said Appellant from the Judgment of the Honourable Mr. Justice Murphy herein, dated the 28th day of March, 1935; and alternatively for an Order that the said Appellant may be at liberty to appeal to His Majesty in Council from the said Judgment of the Court of Appeal upon such conditions as may be provided by the Privy Council Rules and ordered by this Honourable Court; and for such further or other Order as to the Court may seem meet.

No. 10.
Appellant's
Notice of
Motion for
leave to
appeal,
29th July,
1935.

And take notice that in support of this Motion will be read the Appeal Book herein, the Judgment of the Court of Appeal, and such reasons for judgment as may be handed down before the hearing of the Motion, and
 20 the Affidavit of Vernon Lloyd-Owen sworn herein the 29th day of July, 1935 and filed, and such other material as Counsel may advise.

Dated at Vancouver, British Columbia, this 29th day of July, A.D. 1935.

IAN A. SHAW
Solicitor for the Appellant.

To: the Respondents

And to T. Edgar Wilson, Esq., their Solicitor,
To The Liquidator of Pioneer Gold Mines Ltd.
(In Liquidation)

30 And to C. W. St. John, Esq., his Solicitor.

No. 11.**Affidavit of Appellant in support of Motion.**

I, VERNON LLOYD-OWEN, of the City of Vancouver and Province of British Columbia, MAKE OATH AND SAY :—

1. I am the appellant above-named.
2. I am informed by my Solicitor, Mr. Ian A. Shaw and verily believe that by Judgment of this Honourable Court my appeal herein was dismissed on or about the 17th day of July, A.D. 1935.
3. I am advised by my said Solicitor and by Counsel herein that an
 40 appeal from the said Judgment of this Honourable Court to the Supreme

No. 11.
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Court of Canada will lie if this Court should be pleased to grant leave in that behalf, and I am desirous that such leave should be granted to enable such an appeal to be taken.

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tinued.

4. I am further advised by my said Solicitor and verily believe that the next sittings of the Supreme Court of Canada for the hearing of appeals has been set for Tuesday the 1st day of October, 1935, and that should this Court be pleased to grant leave, that such appeal could by special effort be prepared to be heard at that time, and that the next sittings of the said Court will not be held until Tuesday the 4th day of February, 1936.

5. At page 15 of the Appeal case herein is set forth a true copy of the Order made by The Honourable Mr. Justice Murphy on the 11th day of July, 1933 extending the time for dissolution of Pioneer Gold Mines Limited (In Liquidation) until the 20th day of May, A.D. 1936. 10

6. If any recovery is to be made by the Company the same should be made at the earliest possible moment, otherwise the future rights of the Company will be seriously and irretrievably affected.

7. The said proposed action will call into question the validity of the steps and procedure by, under or through which the Respondents, known as the "Wallbridge Syndicate" purported to acquire title to the lands and mining property of the said Pioneer Gold Mines Limited (In Liquidation) and the right and title to the said lands purposed to have been conveyed by the said Respondents to the Pioneer Gold Mines of B.C. Limited, which latter Company is now in possession of and is working the said lands and mining property, and has been and is now rapidly depleting the said mine and distributing the proceeds thereof by way of dividends to the Respondents and others. 20

8. The purpose of the proceedings taken by me herein is to enable the Pioneer Gold Mines Limited (In Liquidation) to secure and vindicate the said Company's right to the rents, profits and proceeds of the said Company's mining lands and property wrongfully and by illegal means and in an unauthorised manner taken from the said Company and alleged to have been acquired by the said Respondents. 30

9. I am advised by my said Solicitor, and I verily and truly believe, that the matters involved in this appeal are matters of general character and importance and the final determination thereof will create precedents for future guidance in Company law and management.

10. The amount involved in the proposed action is largely in excess of the sum of Three thousand dollars (\$3,000.00) there being one specific claim for the recovery of upwards of \$30,000 in addition to the recovery of 800,000 shares in the capital stock of a Company known as Pioneer Gold Mines of B.C. Limited which has a market value of upwards of \$7,500,000.00. 40

11. The proceedings herein and the proposed appeal involve the construction and application of a Judgment of the Privy Council as affecting the rights of the parties and bring up matters of public interest or concern and raise several important questions of law.

12. If, for any reason the Court should be of opinion that an appeal to the Supreme Court of Canada does not lie or that leave therefor should not be granted then and in such case I am desirous that leave be granted to appeal from the said Judgment herein to the Judicial Committee of His Majesty's Privy Council.

Sworn before me at Vancouver }
 in the Province of British }
 Columbia, this 29th day of July, } VERNON LLOYD-OWEN
 A.D. 1935.

10 F. R. Anderson
 A Commissioner for taking Affidavits
 within British Columbia.

*In the
 Court of
 Appeal.*

No. 11.
 Affidavit of
 Appellant
 in support
 of Motion,
 29th July,
 1935—*con-
 tinued.*

No. 12.

Affidavit of Alfred E. Bull.

I, ALFRED EDWIN BULL, of the City of Vancouver, in the Province of British Columbia, Barrister-at-law, MAKE OATH AND SAY :—

1. That I am one of the above mentioned respondents.

20 2. That the late David Sloan gave evidence on behalf of the respondents in the former action of Andrew Ferguson, personally and as Administrator of the Estate of Peter Ferguson, deceased, suing on behalf of himself and the Estate and on behalf of all other shareholders of Pioneer Gold Mines Limited (In Liquidation) except the Defendants, Plaintiff, and Helen A. Wallbridge and David Stevenson Wallbridge, as Executors and Trustees of the Estate of Adam H. Wallbridge, deceased, Alfred E. Bull, J. Duff-Stuart, R. B. Boucher, Francis J. Nicholson and John S. Salter as liquidator of Pioneer Gold Mines Limited (In Liquidation), Defendants.

30 3. That the evidence of the late David Sloan both that given by him in the said former action and other material evidence which he could have given if alive is necessary and material to support the case for the Respondents herein in the proposed action at the suit of Pioneer Gold Mines Limited (In Liquidation) if leave were given to bring such an action, as I am advised by Counsel and verily believe.

4. The said David Sloan died at the City of Vancouver on the 4th day of August 1935.

Sworn before me at the City of }
 Vancouver, in the Province of }
 British Columbia, this 3rd day } A. E. BULL.
 of September A.D. 1935.

40 D. Donaghy
 A Commissioner for taking Affidavits
 within British Columbia.

No. 12.
 Affidavit of
 Alfred E.
 Bull, 3rd
 September,
 1935.

*In the
Court of
Appeal.*

No. 13.

Order dismissing Motion for leave to appeal.

COURT OF APPEAL.

No. 13.
Order
dismissing
Motion for
leave to
appeal,
1st October,
1935.

IN THE MATTER OF THE " COMPANIES ACT " and

IN THE MATTER OF PIONEER GOLD MINES LIMITED (IN LIQUIDATION) (Victoria Oct. 11 1935. Registry).

VERNON LLOYD-OWEN - - - - - *Petitioner (Appellant)*

and

JOHN S. SALTER, Liquidator of Pioneer Gold Mines Limited (In Liquidation) - - - - - *Petitioner*

and

ALFRED E. BULL, J. DUFF-STUART, R. B. BOUCHER, F. J. NICHOLSON, HELEN A. WALLBRIDGE and D. S. WALLBRIDGE, Executors and Trustees of the Estate of ADAM H. WALLBRIDGE, deceased - - - - - *Respondents.*

Coram :

THE HONOURABLE MR. JUSTICE MARTIN
THE HONOURABLE MR. JUSTICE MACDONALD
THE HONOURABLE MR. JUSTICE McQUARRIE

Vancouver B.C. the 1st day of October, 1935.

Upon reading the Notice of Motion of the Petitioner (Appellant) Vernon Lloyd-Owen, dated the 29th day of July 1935 for leave to appeal to the Supreme Court of Canada from the Judgment of this Honourable Court pronounced on the 17th day of July, 1935 and alternatively for leave to appeal to His Majesty in Council from the said judgment, and upon reading the affidavit of Vernon Lloyd-Owen sworn herein the 29th day of July, 1935, and the affidavit of Alfred E. Bull sworn herein the 3rd day of September 1935 and the appeal book and judgment herein and upon hearing Mr. J. A. MacInnes of Counsel for the Petitioner (Appellant) and Mr. J. W. deB. Farris, K.C., of Counsel for the Respondents, and the Petitioner John S. Salter who had been served with notice of this Motion not appearing :

THIS COURT DOTH ORDER AND ADJUDGE that the said Motion be and the same is hereby dismissed, and that said Petitioner (Appellant) do pay to the said Respondents their costs of this motion forthwith after taxation thereof.

By the Court

OSWALD BARTON

Deputy Registrar.

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No. 14.

Order in Council granting special leave to appeal to His Majesty in Council.

AT THE COURT AT BUCKINGHAM PALACE

The 20th day of December, 1935

PRESENT

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT SIR LANCELOT SANDERSON

LORD COLEBROOKE SIR KINGLSEY WOOD

*In the
Privy
Council.*

No. 14.
Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
20th Decem-
ber, 1935.

WHEREAS there was this day read at the Board a Report from the
10 Judicial Committee of the Privy Council dated the 17th day of December
1935 in the words following, viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the
Seventh's Order in Council of the 18th day of October 1909 there
was referred unto this Committee a humble Petition of Vernon
Lloyd-Owen in the matter of an Appeal from the Court of Appeal
for British Columbia in the matter of the Companies Act and in the
matter of Pioneer Gold Mines Limited (in liquidation) between
the Petitioner-Appellant and Alfred E. Bull J. Duff-Stuart R. B.
Boucher F. J. Nicholson and Helen A. Wallbridge and D. S. Wall-
20 bridge executors and trustees of the estate of Adam H. Wallbridge
deceased and John S. Salter Liquidator of Pioneer Gold Mines
Limited (in liquidation) Respondents setting forth (amongst other
things) that the Petitioner asks for special leave to appeal from
a Judgment of the Court of Appeal dated the 17th July 1935
affirming an Order of the Supreme Court of British Columbia dated
the 28th March 1935 whereby Murphy J. dismissed a Petition
of the Petitioner and the Respondent John S. Salter as the
Liquidator of Pioneer Gold Mines Limited for an Order under
section 218 of the Companies Act directing or granting leave for
30 legal proceedings in the name of Pioneer Gold Mines Limited (in
liquidation) : that the Respondent John S. Salter is the Liquidator
of the Company and while taking no active steps beyond joining
in the Petition to the Supreme Court and appearing by Counsel at
the hearing thereof submitted and submits himself to the directions
and Orders of the Court : that the Petitioner is a member of and
a contributory in the winding-up of the Company being the
registered holder of 10,580 shares in the capital stock of the
Company : that the Petition was presented to enable proceedings
to be taken in the Company's name in respect of matters which had
40 been the subject of a previous Action by one Andrew Ferguson
(personally and in a representative capacity) against all the Re-
spondents : that this Action in the Supreme Court and an Appeal
therein were dismissed and Andrew Ferguson then exercised his

*In the
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Council.*

No. 14.
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continued.

right of appeal (the Appeal being numbered 18 of 1934) to Your Majesty in Council in which the Judgment of the Lords of the Committee was delivered by Lord Blanesburgh on the 1st February 1935: that after the delivery of this Judgment the Petitioner investigated the allegations made and is advised that the Company has a good cause of action in the circumstances set out in the Judgment on the ground of the directors' fraud and breach of trust: that the Petitioner accordingly secured the concurrence of the Respondent John S. Salter as liquidator of the Company in presenting the Petition therein before mentioned which (after setting 10
out the Petitioner's inability otherwise to obtain redress) concluded with the following prayers:—

' Wherefore Your Petitioners Pray :

' For directions in relation to the course to be followed by the Liquidator in the premises.

' Your Petitioner Vernon Lloyd-Owen Prays :

' (a) For an Order that the Liquidator of Pioneer Gold Mines Limited (in Liquidation) be directed to take action forthwith in the name of the Company against such persons as Counsel may advise and without limiting the generality 20
of the foregoing against Alfred E. Bull J. Duff-Stuart R. B. Boucher F. J. Nicholson Helen A. Wallbridge and the Executors and Trustees of the Estates of Adam H. Wallbridge and Lewis K. Wallbridge or any of them for the recovery of all property and assets of the Company which may be alleged to have been wrongfully acquired by the proposed Defendants or any of them and without limiting the generality of the foregoing for the following relief :

' 1. For a Declaration that the profit on an Agreement dated 21st January 1925 and allegedly made between 30
the Company and the members of the Wallbridge Syndicate was and is the property of the Company ;

' 2. For a Declaration that 800,000 shares in Pioneer Gold Mines of B.C. Limited and all dividends thereon acquired and/or received by the members of the Wallbridge Syndicate were and are the property of the Company ;

' 3. For all necessary and incidental orders to compel the proposed Defendants to restore to the Company all such monies and properties together with interest ; or

' 4. In the alternative to compel the proposed 40
Defendants to contribute such sum or sums to the assets of the Company by way of compensation in respect to the matters complained of as the Court may think just ; and

' 5. For orders for the interim preservation of the subject matter of the litigation; and

' 6. For such further and other relief as may be available to the Company.

' (b) In the alternative Your Petitioner Vernon Lloyd-Owen prays that he be granted leave to bring action in the Company's name to obtain relief as aforesaid on the Company's account for vindication of the Company's rights: '

10 that by the directions of Murphy J. before whom the Petition came on for hearing *ex parte* it was served upon the Respondents: that both before Murphy J. and in the Court of Appeal the Respondents were allowed to be heard in opposition to the Petition and even to adduce evidence consisting (*inter alia*) of extracts from the arguments before the Judicial Committee in the Ferguson case: that by Order dated the 28th March 1935 Murphy J. ordered that the Liquidator take no action in the name of the Company or otherwise against the Respondents Alfred E. Bull J. Duff-Stuart R. B. Boucher F. J. Nicholson and Helen A. Wallbridge and D. S. Wallbridge or any of them for the recovery of or otherwise in
20 respect of any property or assets of the Company which may be alleged to have been wrongfully acquired by them or for any other relief as set out in the said Petition; and that leave be refused to the Petitioner to bring Action in the Company's name and that the Petition be dismissed: that the Petitioner appealed to the Court of Appeal and on the 17th July 1935 the Court dismissed the Appeal: that the Petitioner applied to the Court of Appeal for leave to appeal to the Supreme Court of Canada or alternatively for leave to appeal to Your Majesty in Council but on the 1st October 1935 the Court dismissed the application: And humbly praying
30 Your Majesty in Council to order that the Petitioner shall have special leave to appeal from the Judgment of the Court of Appeal for British Columbia dated the 17th July 1935 or for such further or other Order as to Your Majesty in Council may appear fit:

40 "THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Appeal for British Columbia dated the 17th day of July 1935 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs:

"And their Lordships do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an

*In the
Privy
Council.*

—
No. 14.
Order in
Council
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ber, 1935—
continued.

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Privy
Council.*

authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.”

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Council
granting
special leave
to appeal to
His Majesty
in Council,
20th Decem-
ber, 1935—
continued.

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Lieutenant-Governor of the Province of British Columbia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

10

M. P. A. HANKEY.

NOTE.—This Order in Council was varied by Order in Council dated the 24th March 1936 by substituting the deposit of a bond in the Registry of the Privy Council instead of cash security.

E X H I B I T S.

Exhibits.

**EXHIBIT A.—TO AFFIDAVIT OF VERNON LLOYD-OWEN, DATED
13th MARCH, 1935.**

**Judgment of the Judicial Committee of the Privy Council in the Appeal of Ferguson v.
Wallbridge, 1st February, 1935.**

To affidavit
of V. Lloyd-
Owen, of
13th March,
1935.

(Not printed.)

—
A.

B.—TO AFFIDAVIT OF VERNON LLOYD-OWEN, DATED 13th MARCH, 1935.

Order of the Supreme Court of British Columbia.

IN THE SUPREME COURT OF BRITISH COLUMBIA

10 **IN THE MATTER OF THE " COMPANIES ACT "**
and

**IN THE MATTER OF PIONEER GOLD MINES
LIMITED (IN LIQUIDATION)**

B.
Order of
the Supreme
Court of
British
Columbia,
11th July,
1933.

Tuesday the 11th day of July, 1933.

Before the Honourable Mr. JUSTICE MURPHY.

Upon Petition presented to this Honourable Court on behalf of Andrew Ferguson personally and as administrator of the Estate of Peter Ferguson deceased, for an order that the dissolution of Pioneer Gold Mines Limited (In Liquidation) be declared void and that the liquidation of the said
20 Company be continued upon terms; and the said Petition having come on for hearing on the 20th day of March, 1933, and having been adjourned until the 21st day of March, 1933, and having on the said date come on for hearing before this Honourable Court presided over by the Honourable Mr. Justice Murphy, and having been referred by the Honourable Mr. Justice Murphy for disposition to the Judge of this Honourable Court presiding at the trial of a then pending action in this Honourable Court under number 891/32 wherein the Petitioner was Plaintiff and John S. Salter liquidator of Pioneer Gold Mines Limited (In Liquidation) and
30 certain directors and shareholders of the said Company were Defendants; and the said Petition having been spoken to before the Honourable the Chief Justice, the Judge presiding at the trial of the said action, and having by him been directed to stand until the 21st day of April, 1933, and having on the said date been adjourned generally to be brought on by notice or by arrangement of the parties; and by consent having this day come on for hearing. Upon hearing Mr. Ian A. Shaw of Counsel for the Petitioner and

Exhibits. Mr. C. W. St. John of Counsel for the Liquidator of Pioneer Gold Mines Limited (In Liquidation) :

To affidavit of V. Lloyd-Owen of 13th March, 1935.

Upon reading the Petition herein dated the 15th day of March, 1933, and the affidavit of Andrew Ferguson sworn herein the 15th day of March, 1933, and filed, and the exhibits therein referred to, and the affidavit of John S. Salter sworn herein the 17th day of March, 1933, and filed, and the exhibit therein referred to, and the affidavit of Ian Alastair Shaw sworn herein the 21st day of April, 1933, and filed :

B. Order of the Supreme Court of British Columbia, 11th July, 1933—continued.

And upon it appearing that on the 13th day of April, 1933, the claim of the Petitioner as Plaintiff in the aforesaid action had been dismissed by the trial judge and that the said judgment has been appealed to the Court of Appeal : 10

THIS COURT DOTH ADJUDGE AND DECLARE the dissolution of Pioneer Gold Mines Limited (In Liquidation) to have been void.

AND THIS COURT DOTH FURTHER ORDER, ADJUDGE AND DECLARE that on the 20th day of May, 1936, the Company shall, unless otherwise ordered, be deemed to be finally dissolved.

AND THIS COURT DOTH FURTHER ORDER that if at any time before the said 20th day of May, 1936, the aforesaid action of the Petitioner shall have been dismissed by order of any Appellate Court or Tribunal and the time for appealing from such decision shall have expired and no appeal taken, the Liquidator of the said Company or any other person who appears to the Court to be interested, may apply to vary this Order and to have the Company finally dissolved. 20

AND THIS COURT DOTH FURTHER ORDER that a copy of this Order shall be filed with the Registrar of Companies within one month from the date hereof.

By the Court

J. F. MATHER

District Registrar. 30



C.—TO AFFIDAVIT OF VERNON LLOYD-OWEN, DATED 13th MARCH, 1935,

and

B.—TO AFFIDAVIT OF CHARLES W. ST. JOHN, DATED 28th MARCH, 1935.

Letter : Vernon Lloyd-Owen to John S. Salter.

1565 Harwood Street,
Vancouver, B.C., February 26, 1935.

John S. Salter Esq.,
Liquidator Pioneer Gold Mines Limited,
(In Liquidation)
808 Hastings St. W.,
Vancouver, B.C.

10

Dear Sir,

The undersigned is a member of Pioneer Gold Mines Limited, being the registered holder of 10,580 shares numbered 347,705 to 357,704 and 479,423 to 480,002 respectively.

In the action of *Ferguson et al* vs. *Wallbridge et al* in which you were a party defendant, the reasons for judgment of the Privy Council are now to hand, and you have been furnished with a copy. From the facts in that case as established in evidence and with which you are perfectly familiar,
20 it would appear that the company has been deprived of very substantial assets by the illegal and unauthorised action of certain members and directors known throughout as the Wallbridge Syndicate.

Unfortunately, owing to the lack of competence in the plaintiff in the Ferguson action, all steps taken in that action to recover Company assets so diverted were abortive, not by reason of any weakness in the claim but by reason only of the absence of any right in Ferguson to propound the claim, and the only result of that protracted litigation is to establish the validity and propriety of the claim therein made, had it only been presented and made in the proper manner and in the Company's name.

I am firmly convinced, and feel that a perusal of the Privy Council reasons will convince you, that this claim for restoration to the Company of assets illegally and without authority taken by the Syndicate should be pressed at once, as plainly intimated in the Privy Council reasons by commencement of actions in the Company's name. Under Sec. 209 (1) of the Companies' Act (1929) you have full power and authority to bring such action. Under Sec. 212 (1) it is your duty to get into your custody all properties and choses in action of the Company, and by s.s. 2 of same section you are to use your own discretion in the management of the Company Estate.

40 You are fully aware of the fact that the proposed defendants in such an action control 51% of the voting power of the membership and under

Exhibits.

To affidavit
of V. Lloyd-
Owen, of
13th March,
1935.

C.

Letter,
V. Lloyd-
Owen to
J. S. Salter,
26th Febru-
ary, 1935.

To affidavit of V. Lloyd-Owen, of 13th March, 1935.

such circumstances it would be futile to submit the matter to the members at large, as the Syndicate would naturally vote down any such action.

Before moving on my own initiative, I am, therefore, requesting you by this letter to take energetic steps, as I consider it is your duty to do, for the commencement of such process as will bring about a restoration to the Company of the assets so abstracted and diverted from it by the said Syndicate.

A prompt reply to this letter, with an answer to my request, will be appreciated.

C. Letter, V. Lloyd-Owen to J. S. Salter, 26th February, 1935—continued.

Yours truly,

10

VERNON LLOYD-OWEN.

To affidavit of Alfred E. Bull, of 27th March, 1935.

A.—TO AFFIDAVIT OF ALFRED E. BULL, DATED 27th MARCH, 1935.

Extracts from oral argument before the Judicial Committee of the Privy Council in the Appeal of Ferguson v. Wallbridge.

(Not printed.)

A.

B.

B.—TO AFFIDAVIT OF ALFRED E. BULL, DATED 27th MARCH, 1935.

Record of Proceedings in the Appeal to the Privy Council of Ferguson v. Wallbridge et al.

(Separate document.)

To affidavit of Charles W. St. John, of 28th March, 1935.

A.—TO AFFIDAVIT OF CHARLES W. ST. JOHN, DATED 28th MARCH, 1935.

20

Letter : Appellant's Solicitors to J. S. Salter.

Vancouver, B.C.,

February 28th, 1935.

A. Letter, Appellant's Solicitors to J. S. Salter, 28th February, 1935.

John S. Salter Esq.,
Liquidator of Pioneer Gold
Mines Ltd. (In Liquidation)
c/o London & Western Trusts Co. Ltd.
808 Hastings St. W.
Vancouver, B.C.

Dear Sir,

Re : THE WALLBRIDGE SYNDICATE

30

We have been instructed by Mr. V. Lloyd-Owen, a member of Pioneer Gold Mines Ltd. (In Liquidation), to take all necessary proceedings for the

enforcement of the rights of the minority shareholders of the said Company arising out of the acquisition of the Company's property by members of the Wallbridge Syndicate.

You are, of course, fully familiar with the recently concluded litigation between Andrew Ferguson and the Syndicate members and you have doubtless perused the Judgment of the Privy Council which we left with you some days ago.

10 In view of the said Judgment and of the undisputed facts in that case, it is clear that any action for the benefit of the Company or the minority must be taken in the name of the Company and we have advised our client to call upon you to take appropriate action in the name of the company against A. E. Bull, J. Duff-Stuart, R. B. Boucher, F. J. Nicholson and the Executors of the Estate of A. H. Wallbridge and on his instructions we enclose herewith a formal demand upon you to take such action.

Our client will possibly have in this matter the assistance of other minority shareholders. It is, of course, understood that you will not be expected to take any personal risk in this litigation but naturally the parties undertaking the expense will insist upon selecting the Solicitors and Counsel who will represent the Company in such litigation.

20 It is our client's desire that proceedings be taken without delay. We would appreciate a prompt reply.

Yours truly,

LAWRENCE & SHAW
Per Ian A. Shaw.

B.—TO AFFIDAVIT OF CHARLES W. ST. JOHN, DATED 28th MARCH, 1935.

Letter : Vernon Lloyd-Owen to J. S. Salter, dated 26th February, 1935.

(Same as Exhibit C to Affidavit of Vernon Lloyd-Owen printed at p. 29).

C.—TO AFFIDAVIT OF CHARLES W. ST. JOHN, DATED 28th MARCH, 1935.

30 Letter : J. W. deB. Farris to Liquidator's Solicitor.

March 12, 1935.

Charles W. St. John Esq.,
Pacific Building,
744 Hastings St. W.,
Vancouver, B.C.

Dear Sir,

Mr. A. E. Bull has handed to me copies of letters which your client Mr. Salter received from Messrs. Lawrence & Shaw and their client Mr. Vernon Lloyd-Owen, and with which you were kind enough to supply
40 Mr. Bull.

Exhibits.

To affidavit
of Charles
W. St. John,
of 28th
March, 1935.

A.
Letter,
Appellant's
Solicitors to
J. S. Salter,
28th Febru-
ary, 1935—
continued.

B.

C.

Letter,
J. W. deB.
Farris to
Liquidator's
Solicitor,
12th March,
1935.

Exhibits.
 To affidavit
 of Charles
 W. St. John,
 of 28th
 March, 1935.

C.
 Letter,
 J. W. deB.
 Farris to
 Liquidator's
 Solicitor,
 12th March,
 1935—con-
 tinued.

These letters call upon Mr. Salter, as Liquidator, to bring an action on behalf of the Pioneer Gold Mines Ltd. (in liquidation) against Messrs. Bull, Duff-Stuart, Boucher and the estate of the late Wallbridge for the recovery of assets lost to the company by the alleged illegal and unauthorised action of these gentlemen as members of the Wallbridge Syndicate so-called, and by some of them as directors of the above named Company.

If my understanding is correct, you have thoroughly gone into the whole question and advised Mr. Salter as to his duties as liquidator in this connection, and, on your advice, he has refused the request made on him, Mr. Shaw, I understand now wishes you to apply to the Court for directions on behalf of the liquidator. Although I quite realise that Mr. Salter in his duties as liquidator is quite mindful, and correctly so, of the fact that in such position he is at all times subject to the direction of the Court and will of course comply with any direction given, I do not think he should himself apply to the Court, either alone or in consort with any other person or persons, as, if Mr. Lloyd-Owen is serious in his allegations, he can himself apply to the Court for an order. From my very complete knowledge of this whole matter, which has already gone through three Courts, I wish to point out my client's position, in the event that you have not already advised Mr. Salter as to his duty in connection with Mr. Shaw's latter request.

In Mr. Shaw's letter he states that as a result of the Judgment in the Privy Council it is clear that any action for the benefit of the Company or the minority must be brought in the name of the Company. This statement is quite correct, but it does not follow that because such an action, if brought, must be brought in this form, that therefore there is any justification for such an action being brought. His letter offers no opinion that there is any such justification. His client, Mr. Lloyd-Owen, however, does venture some opinions on the question. He states:—

First: the facts in the Ferguson action establish that "the company has been deprived of very substantial assets by the illegal and unauthorised action of certain members and directors known throughout as the Wallbridge Syndicate."

Second: "Unfortunately, owing to the lack of competence in the plaintiff in the Ferguson action, all steps taken in that action to recover company assets so diverted were abortive, not by reason of any weakness in the claim but by reason only of the absence of any right in Ferguson to propound the claim, and the only result of that protracted litigation is to establish the validity and propriety of the claim therein made, had it only been presented and made in in the proper manner and in the company's name."

Third: "I am firmly convinced, and feel that a perusal of the Privy Council reasons will convince you, that this claim for restoration to the company of assets illegally and without authority taken by the Syndicate should be pressed at once, as plainly intimated by the Privy Council reasons by commencement of actions in the company's name."

My knowledge of the facts offered in evidence and of the Judgments given in the Courts of this Province and my reading of Mr. MacInnes' argument before the Privy Council, the observations of the Lordships during this argument, and their Lordships' Judgment as pronounced by Lord Blanesburgh convince me that Mr. Lloyd-Owen is wrong in each of his three assertions.

Exhibits.
To affidavit
of Charles
W. St. John,
of 28th
March, 1935.

10 First : In the Courts of this Province no question arose as to the competency of the Plaintiff to bring the action. As a consequence all the issues of fact and law were fully considered and passed upon.

His Lordship Chief Justice Morrison found the facts against the plaintiff so decidedly that he termed the proceedings " A wild mares nest ". In law he dismissed the action.

C.
Letter,
J. W. deB.
Farris to
Liquidator's
Solicitor,
12th March,
1935—*con-
tinued.*

In the Court of Appeal :

The Chief Justice found as follows :—

1. As to fraud he held there was no actual fraud ; but that there was a breach of trust.

2. Notwithstanding the breach of trust he found for the defendants :

20 (1) That the Plaintiff could not accept the option and sale to Sloan and attach the rights of the defendants : " In my opinion when the plaintiff acquiesced in and relied upon the option he confirmed and ratified the whole agreement."

(2) In any event in view of the dissolution of the company and the change in position of the parties the action can not be maintained.

30 Mr. Justice Martin found that a case of constructive fraud had been made out as to the first meeting of the directors, but in view of Section 102 of the company's articles and, in view of the ratification of the directors' actions by the general meeting of the company, at which over 95% of the shares were represented and voted unanimously for ratification, his Lordship held there was no right of action.

Mr. Justice M. A. Macdonald, to quote from Mr. MacInnes' Case in the Privy Council, decided as follows :

" The matters complained of ' were matters of policy and internal management and were at the most voidable only and therefore capable of ratification at a general meeting and that there was no fraud active or constructive or harsh, oppressive or unconscionable conduct revealed.' "

40 " That what was done at the 5th December meeting was the expressed will of a majority in respect of the internal matters within the corporate powers of the company."

Mr. Justice McPhillips alone of all the Judges of the Courts here and in England decided for the plaintiff. His Judgment finds " A secret agreement "; actions " unmindful of the law "; " fraud by way of breach

Exhibits.
 To affidavit
 of Charles
 W. St. John,
 of 28th
 March, 1935.

C.
 Letter,
 J. W. deB.
 Farris to
 Liquidator's
 Solicitor,
 12th March,
 1935—*con-
 tinued.*

of duty"; and "initial fraud", which "permeates the whole": "it was all conceived and based on initial fraud"; "there was fraudulent concealment here."

"Further shareholders—not directors—parties to the fraud and breach of duty and members of the Syndicate carrying out the sale and profiting by the secret agreement also must account for all the profits received."

The answer to this Judgment is that not only was it not supported by any other Judge in British Columbia, but in the Privy Council their Lordships declared:—

"The existence of such a conspiracy as alleged was in its universality of range on both sides almost unthinkable." 10

"It is however fair to the respondents that their Lordships having heard the appellants' case should here say that in their judgment these allegations (of fraud) so recklessly made have not in this action been established."

"Their Lordships feel it their duty to mark their sense of the appellants refusal to withdraw those charges of conspiracy and fraud that in their Lordships' opinion had not been supported in evidence."

Second. So far as it is suggested that the Privy Council has in any way intimated that the plaintiff would have had any cause of action if the case had been properly brought I must definitely challenge the suggestion. 20

As already pointed out, they have repudiated the idea fraud. Yet fraud was, in the opinion of Mr. MacInnes, the essence of the whole case. See his Case, paragraphs 2 and 66. Note also his persistence in not withdrawing the charge.

The suggestion that the Privy Council has in any sense intimated that the Plaintiffs would have had a case, apart from fraud, if it had been properly brought, is without the slightest foundation and is based, if on anything, on a misunderstanding of their Lordships' Judgment. 30

His Lordship Lord Blanesburgh was most careful throughout to state that they were making no pronouncement on the merits apart from fraud, because the respondents had not been heard. All that he did was to recite what the contentions of the appellant were so as to decide whether or not these claims when stripped of camouflage were really claims which should have been made on behalf of the company and so in a different form of action. It is true that towards the end of the Judgment His Lordship points out the correct procedure for bringing an action when a company is in liquidation. It may be excusable for Mr. Shaw's client, a layman, to think that because the learned Judge is pointing out how such an action should be brought that therefore, he is suggesting also that in fact it should be brought. This latter is the one thing His Lordship is guardedly careful not to do. More than once he points out that as the respondents have not been heard, they are offering no opinion. It follows, therefore, that so far as there is any semblance of a case left out of the wreck and, apart from fraud, the decisions of the Courts in British Columbia are still effective. 40

Not only is it true that their Lordships, by the Judgment, have guarded themselves as I have stated, but a perusal of their comments during the course of Mr. MacInnes' argument will show that, even without hearing the respondents, they were emphatically of the opinion that the appellant had no case on any ground.

Having in mind therefore that the decision of the Privy Council is that the charges of fraud were ill-founded; that Mr. MacInnes had expressly stated that this was the main aspect of his case; that the Courts in British Columbia have expressly found against him, not only on fraud, but on all
 10 other grounds, and that these decisions still remain unchallenged; and in view of my own knowledge of the facts and belief that there is no justifying any action, I am strongly of the opinion, and have so advised my clients that the Pioneer Gold Mines Limited (In Liquidation) have no case against them, and that the liquidator would be ill-advised to take any action or steps in that direction.

I, of course, have no objection to your giving a copy of this letter to Messrs. Lawrence & Shaw.

Yours truly,

J. W. DEB. FARRIS.

Exhibits.

To affidavit
 of Charles
 W. St. John,
 of 28th
 March, 1935.

C.

Letter,
 J. W. deB.
 Farris to
 Liquidator's
 Solicitor,
 12th March,
 1935—*con-
 tinued.*

In the Privy Council.

No. 12 of 1936.

ON APPEAL FROM THE COURT OF APPEAL FOR
BRITISH COLUMBIA.

IN THE MATTER OF THE COMPANIES ACT

AND

IN THE MATTER OF PIONEER GOLD MINES
LIMITED (IN LIQUIDATION).

BETWEEN

VERNON LLOYD-OWEN - - (*Petitioner*) *Appellant*

AND

ALFRED E. BULL, J. DUFF-STUART, R. B.
BOUCHER, F. J. NICHOLSON AND HELEN A.
WALLBRIDGE AND D. S. WALLBRIDGE,
EXECUTORS AND TRUSTEES OF THE ESTATE OF
ADAM H. WALLBRIDGE DECEASED - - *Respondents*

AND

JOHN S. SALTER, LIQUIDATOR OF PIONEER
GOLD MINES LIMITED (IN LIQUIDATION)
(Petitioner) Respondent.

RECORD OF PROCEEDINGS.

BLAKE & REDDEN,

17, Victoria Street,

London, S.W.1.

Solicitors for the Appellant.

GARD LYELL & CO.,

47, Gresham Street,

London, E.C.2.

Solicitors for the Respondents, other than Liquidator.