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THE LAW OF MINING RIGHTS IN QUEBEC

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PREFACE

This work has for its object the study of the more important provisions of the Mining Act of the Province of Quebec as well as the related legislations of some of the other Provinces. Due to the complete lack of writings on the subject of Mining Law in this Province in the past fifteen years, the author has attempted to retrace the Mining Legislation of the Province of Quebec to its source and to suggest amendments to certain chapters of the Mining Act where considered necessary.

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CHAPTER I

H I S T O R Y

A) The First Years of Mining

It is not many years since all metals were regarded as the personal property of the feudal lord of the region in which they were found, no matter what rights the lord may have granted for the use of the surface. This idea of sovereignty still exists in many countries and as both gold and silver when coined become currency, the manufacture of currency has always been considered a state monopoly, and mines bearing gold and silver have been termed royal mines and considered as belonging to the sovereign.

Again, it is only a few years since the list of known metals was only seven: gold, silver, mercury, copper, tin, lead and iron, and it was not until 1700 that zinc was considered a commercial product. Aluminum, nickel, platinum, titanium, manganese, uranium, chrome, and tungsten have only been known as such for fifty years, and coal mining as an industry began in a very limited manner in the year 1750 and did not become of importance until the year 1820.

Gold which has been an object of search for over 8,000 years, has only been mined commercially since approximately 1880 when it was found simultaneously in California and Australia. Before 1880, gold came from placer mines or from veins yielding visible metal from which it was taken by simple hand crushing and washing.

According to T. A. Rickard in his volume entitled, The Romance of Mining, the first mining adventure took place when Jason sailed from Greece to the gold diggings at Colchis in the Caucasus. This adventure is part of the Greek mythology but probably contains a certain amount of truth.

Perhaps the earliest organized mining of which there is any official record was at Laurium in Greece (laura meaning a lane as referring to the trenches that were cut in search of ore), where deposits of silver, lead and zinc ore were found as far back as 1000 B.C. and it has been proved that the Greeks worked the mines between 600 and 400 B.C. Xenophon the Greek writer refers to them in his writings in the year 355 B.C. These mines were owned by the government and leased to the citizens on a royalty basis, with the actual mining operations being carried on by slave labour. By the concensus of most authors, the earliest mining took place in the fabulous East Indian tin deposits. To understand the importance of these deposits, we must recall the fact that copper is the only metal existing in a native or pure condition in any quantity in the crust of the earth and, accordingly, the archaeologists generally find at the beginning of all civilizations a period when most implements, ornaments and weapons were made of copper. Before an extensive knowledge of iron was current, is generally found an age of bronze, an alloy composed of copper and tin. Tin is never found in a native state but its principal ore, cassiterite, can be easily reduced to the metallic state, and it came about at some place and at some time that this white soft metal, when put into contact

with copper tools or weapons, would keep an edge under circumstances where copper alone would fail to do so.

It was the central European mines that gave to Germany her acknowledged primacy in mining knowledge and science in the civilized world which she retained until mining became commercialized in the United States between 1860 and 1880. It was from the town of Iglau in Bohemia where the rich silver veins of the countryside were worked by the Celts as early as 500 A.D. and it was in this town that a code of the local mining laws dating back as far as 1249 was found. This code, according to most authors, is recognized as the first codification of the laws relating to the mining industry.

It is through the finding of meteorites that mining was put to its first practical use. Articles made of iron and believed to have been fashioned as early as 4000 B.C. were found in the Pyramids and when the Romans first arrived in Britain in 55 B.C., they found iron of common use among the aborigines of the country. It is due to the fact that the best coke in the world was produced in England, that that country was able to dominate the steel world, for as the original knowledge held by the Germans of heat production spread to France and England, the English specialized in the manufacturing of the best coke and were able to forge even further ahead with the invention of the Bessemer converter.

As mining is in fact a very modern industry, it necessarily follows that mining laws must be of recent origin and it is only the embryo of mining law as such that can be found in Europe or in any other part of

the old world, for the feudal system as practised had given all the land to the chosen few and they in turn made whatever laws they considered as furthering their own aims. With the great discoveries in the new world and its resultant wealth for those Europeans who had invested in its fabulous gamble, businessmen, adventurers and criminals spread into its large domain and many received without any effort whatever large grants of land where they were lord and master as long as they paid the agreed royalty to the King or to his representative. As one can easily imagine, those who received these fabulous grants did very little in the way of prospecting as it was considered below their dignity, and the natives were forced to prospect with little or no results. As the old properties became exhausted, there was nothing in the way of new discoveries to replace them. For at least 200 years, the whole of Latin America lay dormant and even the Inquisition had but a slight effect upon the prospecting and developing of mines. However, with the years, American capital started to flow into some of the Latin American countries, such as Brazil, in the first half of the 19th century, and an attempt was made to modernize the scanty mining laws then in existence, using as a fundamental principle the concept that mining rights should be granted mainly in the form of concessions. This system was favourable to capital, and much money was spent in developing their mines, but very little was accomplished with reference to the laws. The selfish principles which had been the basis of all mining rules and regulations in Europe for centuries were modified but slightly with the years and the mining codes that resulted

in Latin America contain little of use for us, except an interesting bird's eye view of the links connecting European customs and practice, and the laws which were made for subject populations and privileged classes.

B) THE INFLUENCE OF CALIFORNIA AND AUSTRALIA

From a Canadian as well as from a world viewpoint, it was with the discovery of gold in California in 1848 and in Australia in 1849 that mining law as a modern instrument was created. The course of events which took place in California and Australia were practically identical as both the American Indian and the Australian native refused to work for the whites as they preferred living in their primitive but happier manner. Consequently, the immigrants had to do most of the work themselves which they were allowed to do by the natives as they took no interest in such work.

The knowledge of gold in California goes back to 1829 when a priest named Luis Martinez presented twenty balls of gold of one ounce each to four Mexican officials. The priest had obtained this gold from the Indians who had known of its existence but not its importance for many years. The really important discovery of gold in California took place in the year 1848 when John Wilson Marshall was in the process of building a sawmill for Johann Sutter at Coloma near Sacramento. As the sawmill was nearing completion, Marshall noticed in the tail-race for the effluent water small pebbles which looked like gold and which later,

after examination, turned out to be gold.

As at the time of the first discovery by Marshall, California was under military rule, it was decided by the senior officers of the American Army not to interfere with the goldfields. General Smith, a year later, issued a report declaring that the mines were on public lands and therefore belonged to the Government of the United States but did nothing about enforcing the Government's right. As the Californian Government had not yet been formed, it was left to the immigrants to draft their own regulations. They at onee organized, elected officials, and drafted a mining code which in its form was simple but which took care of their mining problems. Magistrates were elected who decided on all disputes and it was considered as settled law for anyone to locate a mining claim and hold it against the world.

The Australian discovery was made by Edward Hargraves who had been to California and after examining the type of land where gold was being discovered, returned to his country in 1849 with the belief that such land was similar to his own in Australia. This belief became a certainty when he found gold at the place he expected too at Guyong on the Macquarie River. With this discovery, the authorities immediately asserted the rights of the Crown to the gold. On May 22, 1851, in virtue of a Government edict, it was declared that any person removing gold without permission would be prosecuted; however, this law was not enforced and the authorities attempted to collect a royalty of 5% to 10% depending on whether the gold was found on Crown land or on private land. This

method being unsuccessful, a licence fee was attempted for a time. However, as the discoveries were made a little later than in California, the immigrants were able to examine the American mining code and finding it satisfactory, they decided to adopt its doctrines and precepts with a few unimportant changes, and these laws stayed in force until they were repealed in Australia in 1866 and replaced by the system presently in existence. In the Western mining States of America, no effort was made to change the laws, and up to this date no alterations in the fundamental principles have occurred.

When mining first began in Canada, as a result of the discoveries of gold in British Columbia by the Indians, a similar situation was found in British Columbia. The more important provisions of the California Statute were copied by British Columbia and the principle of regalian right which had become established law in England during the reign of Queeb Elizabeth was also inserted in their mining orders. These orders were considered as law until they were repealed in 1897 for practically the same reasons that caused the abandonment of the American doctrines in the Australian colonies (e.g. the strong tendencies of all British lands to substitute whenever possible theories of land holding more in consonance with the European customs and practice), and there was substituted a code which was partially based upon the Australian system.

The United States of America followed the principle that the land which does not belong to the States belongs to the individual and that

any citizen by following the normal procedure outlined in such matters could search for and file in his name any discovery that he might be the first to find. Their system is based on the fact that the maintainance of mining titles is not mandatory as far as the government is concerned. The Prospector may neglect to record his discovery and yet as long as the property remains in his physical possession, he may extract ore therefrom and convert the same into money free of all obligations to the authorities. On the other hand, failure on his part to perform any one of the acts prescribed by law would give his fellow citizen an opportunity to attack his title and assert a legal claim for the possession of any part or the whole of it. In the case of a contest of this kind, the attitude of the government was simply that of a preserver of the peace until the courts have rendered a decision upon the facts presented.

As to the present mining situation in Europe generally, one cannot purchase land as in Canada or in the United States as no public land remains and, consequently, the laws in force are made so as to compel proprietors of land to allow prospecting on their property as well as development in case of a discovery. For many years, the doctrine that the surface owner was allowed the exclusive ownership of everything under his land has dominated Europe as well as the United States and Canada. However, under the French influence, many advocated the doctrine that undiscovered minerals were "res nullus" and consequently, belonged to the State which in turn usually granted the lands for long periods,

leaving to the discoverer to negotiate with the proprietor of the soil. In England, the owner of the surface is also the owner of all minerals found under it, except as to gold and silver, which are the property of the Crown, although of recent years the Crown has waived its rights.

As for some of the other countries, we find for example that in Argentina, the mines are divided into 3 classes with the result that different laws apply, depending on whether the mines exist under the surface soil or on or in the surface soil, or if they are used to produce building stones, brick clay, sand, cement, rock and similar material. In Bolivia and Chile, all deposits of metals and precious stones are the exclusive property of the State. In Colombia and Panama, the State owns all precious stones while the various states of the republic own deposits of other minerals that occur within their boundaries.

In Canada, we find that with the exception of the National Parks and Indian Reserves, each Province owns its own public land. The Dominion Government owns the public lands in the Northwest Territories and Yukon. In the Provinces of Newfoundland, Manitoba, Saskatchewan and Alberta, the minerals are the property of the Crown, while in British Columbia, claims are held on a yearly basis until a Crown grant is issued. In Ontario, the minerals belong to the owner of the surface unless expressly taken away and in New Brunswick, all mines and minerals are regarded as separate from the soil. Quebec's mining law is based on the doctrine that mining rights constitute a property under the soil, separate

and distinct from that of the soil that is over it, and the Crown retains full mining rights 1) on lands granted subsequently to July 24th, 1880 and 2) in the case of gold and silver in lands granted previous to 1880.

C) THE FRENCH REGIME AND THE CESSION

"Vive le roi de France" were the words inscribed on a stake by Jacques Cartier on the 20th day of July 1534, at the entrance of the Bay of Gaspé, and with that inscription, Jacques Cartier began a series of possessory actions in the name of his sovereign, the King of France, who in virtue of the laws existing at that time was allowed to dispose of said lands in any manner that he saw fit. The King of France attempted to develop this new country by granting large concessions to various influential people and in 1627, at the instigation of Cardinal de Richelieu, the King of France granted a charter to the "Company of the Hundred Associates" and gave it the whole of New France with the right to grant concessions. The administration of Canada changed hands in 1663 after the "Compagnie des Cent Associés" was abolished for being unable to fulfill the conditions of their charter which obliged them to bring into New France a minimum of 4,000 settlers within 15 years, and the West Indian Company obtained the same tremendous seigniory for the purposes of colonizing and civilizing. This company only lasted until 1674 but during its reign it ceded a very large number of seigniories to the seigneurs who in turn ceded the concessions to the settlers.

During these periods from 1627 to 1674, about 220 seigniories were granted embracing an area of approximately 11½ million acres, but what was most remarkable was that during the above period, although those in authority had full power to dispose of the Mining Rights, it was only in a few cases that the said Rights were granted, so that when the charters of the companies were cancelled, most of the rights returned to the Government.

By the Treaty of Paris in 1763, the French possessions were ceded to England with the effect of vesting in the King of England all the public land then held by the King of France and his representatives, with the consequence that all lands in New France and the mines found therein having been vested in the Crown, or originally in the King of France, the origin of every title that an individual may have to such lands or mines was in virtue of a grant from the King of France or from the King of England. It is therefore of the utmost importance when one is examining titles in seigniories granted before Confederation, whether during the French regime or the English regime, to examine the original grant to see if the Crown still has an interest. As this point is treated at length in the latter portion of this work, it is considered sufficient for the moment to say that while Canada was a French possession the French law which applied did not convey to the grantee a right to the minerals contained in the soil which remained the property of the King unless special words to that effect were contained in the deed; while during the English regime before Confederation, the laws that applied to the granting of seigniories generally followed the laws of England which reserved to

the Crown only gold and silver, leaving to the proprietor of the surface all the other metals.

From the time of the Treaty of Paris, the grants of lands were made via various regulations and orders-in-council. In 1864, via the Gold Mining Act, the first attempt was made to legislate Mining Rights in the Province of Quebec which, at that time, was made up of both Upper and Lower Canada. This Act referred only to gold mining and its resultant problems.

In 1880, on the 24th day of July, the first Quebec general Mining Law was sanctioned, expressly reserving Mining Rights in grants and sales of Crown lands and has since served as the basis of all our mining laws, for before the above date only gold and silver Mining Rights were reserved in favour of the Crown, unless specifically mentioned in the letters patent.

As of the date of Confederation, the right to grant lands was given to the Canadian Government. Lord Watson declared in the case of Attorney General of British Columbia vs Attorney General for Canada: (1)

> "According to the law of England, gold and silver mines, until they have been aptly severed from the title of the Crown, and vested in a subject, are not regarded as partes soli, or as incidents of the land in which they are found."

(1) 10 Appeal Cases, p.36.

CHAPTER II

THE NATURE OF MINING RIGHTS IN QUEBEC

A) GENERALLY

From the days of the Roman Empire up to our present time, we find different thoughts on the ownership of mines.

With the first Romans, the proprietor of the surface was also the proprietor of the mines under the surface as the metals were considered as being part of the soil above. Later on, the Roman laws changed and due to the importance of the minerals and their value as well as their utility, they were considered as a source of wealth for the whole of the nation and consequently to be taken out of the domain of private property as the individual surface owner usually was not in a position to work or finance the mine, or the mine extended over many properties belonging to different individuals.

Girardin once stated:

> "We have but to examine the mineral vein running through the depths of the earth to obtain the proof that it is not divisible by nature and that it covers many properties belonging to different owners."

With the advent of Theodosius, the basic principles of the regalian right were put into practice and the individual surface owner was allowed to mine underneath the soil as long as he gave one tenth of the profit to the State or, in the case of the mine belonging to someone else, one tenth to the proprietor also.

In the early days of history and even more recently, the need for metals not only for coinage, arms and for many other uses, made them so essential that it became a matter of public order that a country should have first call on them even to the exclusion of the owner of the surface under which they were found. It could be said that those objects that one can appropriate take on the nature of personal goods, while the ones that one can only use along with one's neighbor belong to the State such as rivers, ports, the sea and last but not least the mines.

After the break-up of the Roman Empire, the Gauls considered the regalian right as law for a long time and with the advent of Charles VI, the first important Mining Ordinance was assented to whereby one tenth of the proceeds from every mine were to be given to the King:

> "Que nul seigneur spirituel ou temporel de quelque état, dignité ou prééminence, condition ou autorité, quel qu'il soit en notre dit royaume, n'a, n'aura, ne doit avoir à quelconque titre, cause ou occasion quelle qu'elle soit, pouvoir, ni autorité de prendre, réclamer, ni demander ès-dites mines, ni en autre quelconque assises en notre dit royaume, la dixième partie ni autre droit de mine; mais en sont par notre dite ordonnance et droits de tout forclos, car à nous seul et pour le tout, à cause de nos droits et Majesté royaux, appartient le dixième et non à autres."

This Ordinance was assented to not only to confirm the King's right to his share but also to put an end to the claim which was being made by many of the lords of the realm that they were entitled to a share of the proceeds as representatives of the King. Various other Ordinances then followed confirming Charles VI law, such as the one under Louis XI, the Ordinances of the 3rd of November, 1st of July 1437, 21st of May 1455, December 1461, 10th of May 1463, 10th of August 1467, September 1471, August 1483, and

November 1483. However, to encourage the industry, from 1548 to 1597, all the mines in France were ceded to <u>one individual</u> who worked the mines and paid the King his fixed share.

In France, from 1601 to 1722, there was a return to the early concept that the right to mine belonged to all individuals, with the stipulation that the Crown's revenues would not be affected. Henry IV's Ordinance affirmed his right to a share in the profits like his predecessors but excluded the following types of mines from the obligatory regalian payment:

> "Sans toutefois comprendre en icelles les mines de soufre, salpêtre, de fer, ocre, pétrole, de charbon de terre, d'ardoise, plâtre, craie et autres sortes de pierre pour bâtiment et meules de moulin, lesquelles pour certaines bonnes et grandes considérations nous en avons exceptées, et, par grâce spéciale, exceptions en faveur de notre noblesse, et pour gratifier nos bons sujets propriétaires des lieux."

This important exception was confirmed by other Ordinances and especially by an Ordinance of Louis XV in 1722 which re-established in favour of the Crown the exclusive privilege to all mining concessions, and as this principle was never revoked by the Kings of France before the Cession, it signifies that as far as the Province of Quebec is concerned, in our Quebec seigniories, the Crown does not have the right to the type of mines stated above and is the source of the exception contained in Section 4, sub-sec. 2 of our present Quebec Mining Act :

> "Nevertheless building-stone and stone used for sculpture, limestone, calcite used as flux, millstones and grindstones, gypsum, common clay used for building purposes, fire brick, pottery, ceramic substances, mineral waters, infusory earths or tripoli, fuller's earth and peat, when such minerals are found separate from other substances in the lands of private persons, are neither mines nor minerals within the meaning of the above."

By the Treaty of Paris, 1763, France ceded Canada to England and by so doing, transferred all rights in the soil and the ownership of public land to the English Crown, and Sec. 3 of the Treaty declared nothing should

> "make void or vary, or alter any right, title or possession, derived under any grant, conveyance, or otherwise howsoever, of or to any lands within the said Province or the Provinces thereto adjoining, but that the same should remain and be in force, and have effect, as if the Act had never been made."

The now famous judgment of Regina vs De Lery (1) held that

> "By the old law of France which is in force in Canada, the right to the minerals did not pass by a grant of lands to the grantee without special words but remained in the Sovereign, and consequently the King of England, at the time of the Cession, succeeded to this right."

Article 414 of the Civil Code which deals with the very nature of Mining Rights, states:

> "Ownership of the soil carries with it ownership of what is above and what is below it. The proprietor may make upon the soil any plantations or buildings he thinks proper, saving the exceptions established in the title of Real Servitudes. He may make below it any buildings or excavations he thinks proper and draw from such excavations any products they may yield, saving the modifications resulting from the laws and regulations relating to mines, and the laws and regulations of police."

Let us therefore examine a little further the historical background of the French law before 1763 which serves as the basis of our Article 414 of the Civil Code. Art. 582 of the Napoleonic Code is in the same terms as our Art. 414 of the Civil Code and we have but to look at some of the eminent French authorities to see how the ownership of mines under early French law was treated.

(1) 6 L.N. 402

T. Huc, in his 4th volume, page 167, states the following:

"Quant aux mines proprement dites, elles pouvaient, comme les carrières, appartenir aux particuliers. Certaines cependant ne pouvaient entrer dans le patrimoine privé; c'était probablement celles qui, après une conquête suivie d'un partage de terres, avaient été attribuées au peuple ou à l'empereur. L'exploitation était libre, sauf une redevance à payer au propriétaire de la superficie et une autre redevance distincte à payer au fisc. Cette redevance conservée par les rois de la première et de la seconde race a été l'origine du droit que la royauté finit par s'attribuer sur les mines, comme conséquence autant de la souveraineté que d'un droit prétendu de propriété. La confusion qui régnait alors entre la notion de la souveraineté et celle de la propriété favorise singulièrement la constitution de ce droit régalien au profit du roi représentant l'Etat, et lui permettant d'en disposer au nom de l'Etat."

M. de Fooz in his work entitled Points Fondamentaux de la Législation des Mines, declares:

"Il a été admis, chez presque tous les peuples, que les mines de ce genre font partie du domaine de l'Etat, qu'elles se rangent parmi les biens sociaux; que le dépôt doit en être confié à l'autorité souveraine, et que celle-ci doit avoir la haute main sur leur extraction. En cela consiste le système du droit régalien des mines; c'est celui qui est le mieux en harmonie avec la nature des choses, qui se concilie le mieux avec les principes généraux du droit, et que l'utilité générale recommande."

M. De Labecque, another eminent author, gives further evidence that the mine should be considered as separate from the soil above:

"En remontant à l'origine de la propriété et en recherchant le droit naturel indépendamment de toute autre considération, on voit que, dans le système qui paraît le plus raisonnable, c'est la mise en valeur, l'utilité en un mot, qui a créé la propriété, et qu'ainsi, en se rapportant à cette origine, la mine n'a pu dépendre de la propriété du sol."

Beside the authors mentioned above, there are many others who consider that during most of the reigns of the ancient French monarchs the right to the mines did not belong to the surface owner but to the Kings

of Frande. The concessions granted by the Kings of France in Canada are for the greater part contingent on the fact that if mines were discovered, they would be given to the King who had the sole right to develop them. As stated in my work on Art. 414 C.C., wherever seigniories were granted by the King, it was the usual custom to reserve the Mining Rights in favour of the King. An indication of the inherent right to the mines can be found in the concessions which the King granted for long periods of time and which contained the right to mine the metals irregardless of the ownership of the soil.

M. Mathieu in his Code des Mines reminds us that, although for many years in France the mining legislation was far from definite, it was because the rights to the mines were always considered as part of the King's domain. With the Cession, English law prevailed in the Colony and the well-established English principle was introduced that gold and silver mines belonged to the Crown while other mines belonged to the individual. The above principle was firmly enunciated in the case of Attorney General of Canada vs Attorney General of British Columbia (1).

B) THE LAWS AND REGULATIONS RELATING TO MINING RIGHTS IN QUEBEC

To fully understand the principle of dual ownership applicable to the soil above and the mines below, the Quebec statutory enactments have to be examined.

(1) see page 12 of present work.

The Provincial Mining Act of 1892 brought together the various statutory laws and dealt specifically with the different ownerships of the soil and mines.

Section 1424 of the said Act reads as follows:

> "Whenever a person who has become owner of the soil and of the property under the soil, under any title before the tenth of June 1884, sells, hypothecates, leases or affects the mining rights in such property to another person under Article 2099 of the Civil Code of Lower Canada, such soil and property under the soil again become two properties distinct and independent from each other for all lawful purposes as they were when in possession of the Crown, so that the sale, judicial of otherwise, of one of these properties does not in any way affect the other."

Reading the above section with section 1423, we obtain the basic concept that our Legislators wanted to give to the ownership of minerals. Section 1423 reads as follows:

> "As respects the Crown, such mining rights, so tacitly reserved, shall be property separate from the soil covering such mines and minerals comprised in such rights, and shall constitute a property under the soil which shall also be public property independent from that of the soil which is above it unless the proprietors of the surface or superficial property have purchased it from the Crown as a mining concession or otherwise, in which case the properties superficial and underground, constitute only one private property." (1)

By a 1937 amendment to Sec. 31a of the Act, our legislature brought in a condition to the sale of a Mining Concession by declaring that unless the land had first been subdivided (Sec. 48), the owner of the Mining Concession could not sell the surface rights separately. (2) (3) (4) (5).

(1) Tetreault vs The Griffin Crucible Graphite Mining & Milling Co., 19 B.R. 51
(2) Laurier vs Desbarats, 9 S.C. 274
(3) Stevenson vs Wallingford, 6 S.C. 183
(4) Neil vs Proulx, 1 S.C. 565
(5) Pelletier vs Roy dit Desjardins, 46 S.C. 9

Laurier vs Desbarats; 9 S.C. 274:

"Where the deed of sale of an immoveable contains a reserve of the mines, the latter constitute a distinct property which thenceforth is totally unaffected by any mutations, registrations or prescriptions connected with the surface; the mines and surface are such entirely different properties, when so served, that the ownership of the mines remains undistrubed by an unreserved Sheriff's sale of the lot, or by any prescriptions affecting it."

Stevenson vs Wallingford, 6 S.C. 183:

"The owner of land may validly sell and dispose of the mining rights and minerals therein separately from the ownership of the soil, and after such sale of mining rights and minerals, separate from the soil, a sale of the property for municipal taxes will not vest the purchaser with any right to the minerals."

When the Mining Right to a property under the soil is granted by the Government, it has for obvious effect to separate the property from the surface and to form a completely new immoveable.

Neil vs Proulx, 1 S.C. 565:

"An unreserved sale of an immoveable conveys all mining rights on the same, subject to the provisions of the Quebec Mining Laws; and an action will lie to resiliate such sale of for an indemnity by the purchaser who subsequently discovers that a reserve of such mining rights exists in favour of his vendor's auteurs."

Pelletier vs Roy dit Desjardins, 46 S.C. 9:

"Jugé: - Une concession minière en vertu de l'art. 2110, S.R.Q., 1909, qui est l'aliénation d'un bien de la Couronne, ne peut se faire que du consentement du Ministre de la Colonisation, des Mines et des Pêcheries. Ce consentement ne peut être présumé, ni induit de correspondance ou de circonstances; - il doit être formel et si, à celui qui prétend l'avoir obtenu d'en administrer la preuve, la demande de concession accompagnée du dépôt du prix et suivie de la détermination du site prévu à l'art. 2109 ne confèrent au solliciteur aucun droit de possession ou d'exploitation, tant qu'elle n'a pas été acceptée par le Ministre et que ce dernier n'a pas formellement actroyé la concession."

In this Province, the Department of Mines has jurisdiction over those lands containing mines, and the Department of Lands and Forests has jurisdiction over those lands that can be used otherwise. In the above case, a piece of land was sold to one person by the Department of Lands and Forests by proper title and a second person claimed that he had obtained it previously from the Department of Mines. After examining the facts, the Court established that the person who had applied for the land as a mining property had not fulfilled all the necessary formalities under the Mining Act so as to be entitled to the ownership of the Mining Rights.

Sec. 11, 1 Geo.VI, 1937, Ch. 41, reads:

> "All lands supposed to contain mines or ores belonging to the Crown may:
> 1) be occupied and prospected under a development licence, or
> 2) be worked after having been acquired as a mining concession by purchase;"

But in either of such cases, the land must first be staked out in conformity with the provisions of Sections 48 and following.

From the early part of our Mining Law up to 1 Ed.VII, Ch. 13, there was a preference granted to the owner of the soil to purchase the Mining Rights beneath the surface and we find this precept enunciated in Section 1441, 55-56 Vict., 1892:

> "The Mining Rights belonging to the Crown, in the property under the soil, under Article 1423, may be acquired from the Commissioner in the manner indicated in the preceding article by the proprietor of the soil who has a preferential right thereto",

and this preferential right was further detailed in Section 1456:

"The holder of an exploration and prospecting licence may purchase such mine... the whole however subject to the right of preference granted to the proprietor of the soil, to be himself to the exclusion of all others, the purchaser of the mines and minerals discovered, or which might be afterwards discovered in the soil under his property."

It is, however, important to remember that originally the distinction between proprietor of the soil and proprietor of the objects under the soil applied purely to the Crown (Art. 1423) and not to the individual land owner who possessed both properties, surface and underground.

In virtue of the amendment 1 Ed.VII, Ch. 13, articles 1441 and 1456, the preference granted to the owner of the soil was abolished, and in the R.S.Q., 1909, Section 2111, we have practically the same article as we now find in Sec. 32, R.S.Q., 1941, Ch. 196, which reads as follows:

"The mining rights belonging to the Crown in the lands of private individuals may also be acquired in the manner indicated in Sec. 31."

"Sec. 31 - All lands, supposed to contain mines or ores belonging to the Crown, may:-
1) be occupied, prospected and developed under a development licence, or
2) be worked, after having been acquired as a mining concession by purchase."

Section 1423 has now been replaced in our present law by Secs. 7, 8, etc. of the chapter on "Reserve of Mining Rights".

Let us, however, consider the origin and the reason why the preëmption or preference which was originally granted to the owner of the surface was later negated. Our present article 414 C.C. states:

"Ownership of the soil carries with it ownership of what is above and what is below it, etc... saving the modifications resulting from the laws and regulations relating to mines, and the laws and regulations of police."

This right of preference is purely new law and cannot be found in any of the Ordinances of France. All of the Ordinances of the Kings of France before 1663 expressly reserve the mines to the Crown, and even if we examine those that were assented to after 1663, no change in the principle is found. Consequently, this preference granted by the law of 1880 and its amendments of 1884 and 1892 were a complete departure from the French Ordinances which served as the foundation to our law on mining. Besides the arguments which are found in the chapter on Article 414 C.C. of this work, a fairly recent article by Mr. Betbie, professor at the Faculty of Law in Paris (1) should be cited :

> "La propriété des mines a donné lieu à plusieurs systèmes que se partagent les législations et qui ont successivement exercé de l'influence sur la loi française. Avant la Révolution, les mines étaient considérées comme une richesse domaniale dont le roi était propriétaire et qu'il pouvait concéder par droit régalien. Ce droit fut contesté par des philosophes et spécialement par Turgot, qui proposa d'y substituer le droit du premier occupant, la mine étant une richesse non appropriée, une chose sans maître et que l'occupation devait attribuer. D'autres soutinrent que la propriété de la mine était une conséquence de la propriété de la surface, le propriétaire du dessus étant propriétaire du dessous "usque ad infera". C'est l'opinion qui inspira quelques-unes des dispositions de la loi du 28 juillet 1791; il ne fut pas adopté comme principe de la loi, mais il eut une part très grande, presque égale à celle que lui aurait donnée l'adoption entière. Cette exagération du droit individuel était inconciliable avec la bonne exploitation des mines; "elle avait pour conséquences, en mettant l'exploitation aux mains du premier venu, de préparer le gaspillage d'une richesse considérable." Aussi la nécessité de modifier la loi du 28 juillet 1791, ne tarda pas à être reconnue; elle fut remplacé par la loi du 21 avril 1810 qui, sans méconnaître les droits du propriétaire de la surface, en les reconnaissant même par une indemnité "accorda au gouvernement le droit de choisir les concessionnaires."

(1) Vol. 5, p.461, No. 526.

It is consequently logical to state that the said right of preference which never existed in the ancient law had no "raison d'être" to exist in our modern law and was therefore deleted.

Is the holder of a location ticket under Sec. 1441 of the R.S.Q., 1888, the "Proprietor of the Soil"? In Green vs Blackburn (1), it was held:

> "The expression "Proprietor of the soil" in Sec. 1441 of the Revised Statutes of Quebec, 1888, as amended by 55-56 Vict. Ch. 20, read in connection with Sec. 1269 Revised Statutes of Quebec, 1888, is not intended to designate the holder of a location ticket, and therefore, persons holding Crown lands merely as locatees, have no vested preferential rights to grants from the Crown of the mining rights therein, under Sec. 1440 and 1441 of the Revised Statutes of Quebec, 1888, as amended by the "Act to Amend and Consolidate the Mining Law", 55-56 Vict., Ch. 20."

The judgment of the Court of first instance was not reported.

This case would seem to revolve essentially around the point of whether or not a location ticket carried with it the right to the minerals, for article 1441 as drafted at the time of the case referred to the "proprietor of the soil" acquiring the Mining Rights, in accordance with the terms of article 1440 of the Revised Statutes of Quebec, 1888, which read as follows:

> "The mining rights belonging to the Crown which consist of the ownership of the property under the soil, under articles 1423 and 1424, may be acquired from the Commissioner by sale or lease or by licence or permit of occupation by the proprietor of the soil who has a preferential right to the purchase of such mining rights."

From time immemorial, a location ticket has never meant ownership of the soil. Article 1269 of the Revised Statutes of Quebec, 1888, strongly shows the limitations of the location ticket.

(1) 40 Sup. Court Reports 647.

As in our present law, the holder of a location ticket, if he follows the procedure indicated by the statute, can find himself in the position of a proprietor of the soil with a preferential right to the purchase of the Mining Rights, and notwithstanding the other strong arguments given by Idlington J. in Green vs Blackburn, it would seem that the locatees' right was but a right to acquire the surface rights upon fulfilling all the conditions indicated by the Act. With the granting by the authorities of a deed to the surface, they would then have acquired a preferential right to the Mining Rights. However, as there was no evidence brought forth in the case showing that the appellants had done anything else but obtain location tickets, the conditions of the Act were not satisfied.

A location ticket can only be a conditional right to that portion of the land to which it refers subject under the Mining Act to the rights of the Commissioner to dispose of the Mining Rights as he saw fit. The minerals were therefore outside any right that the authorities might give a person in a location ticket, and would only apply to those who would have a preferential right to the minerals, and those persons would be the owners of the soil.

In the year 1892, in virtue of 55-56 Vict., Ch. 20, the law of 1890 was abrogated and the right of the Crown to all Mining Rights on lands sold for agricultural purposes since 1888 was assented too, as well as the principle of complete separation of the underground property belonging to

the Crown from the property above. By further amendments to the law passed in 1892, the Crown regained its absolute control over the mines situated in seigniories and districts.

Due to the many difficulties encountered in the years from 1880 to 1901, in the interpretation of the deeds to the lands disposed of before the enactments of 1880, it was decided in 1901 to abandon to the surface owner of lands granted between 1763 and 1880, all rights to the mines, with the exception of gold and silver mines which had always been expressly reserved in favour of the Crown. From the Cession to 1880, grants of land were made in virtue of orders-in-council and regulations in which often there were no mention of Mining Rights. From 1796 to 1863, Mining Rights to gold, silver and certain other metals were reserved.

Before 1880, only gold and silver were excepted in favour of the Crown in sales effected of public property and everything else belonged to the proprietor of the surface who could act as he pleased. Since the 1880 law, we have two distinct properties, one the mining property and the other the surface property, and since that date, there is a complete reserve of all Mining Rights in favour of the Crown in any grant or sale of Crown lands.

The important present sections of our Mining Act now read as follows:

"Sec. 7 :- From and after the 24th of July 1880, it is not necessary, in any grant or sale of Crown lands (not being at the same time mining concessions) by letters patent or other titles, granted or executed by the Crown, to mention the reverse of the mining rights, which reserve shall exist as of right in favour of the Crown."

"Sec. 8 :- As respects the Crown mining rights so tacitly reserved, constitute a property under the soil separate and independent from that of the soil that is above it."

"Sec. 9 :- All mines belonging to the Crown under the law or titles of concession, and situated under the soil of land conceded before the 24th of July 1880, in any township, with the exception of gold and silver mines, are abandoned by the Crown and belong exclusively to the owner of the surface, provided the latter has not divested himself of his right of preëmption existing under the previous law."

When the owner of the surface has divested himself of his right of preëmption, the person acquiring such right shall have the first and exclusive privilege of mining, but only in the mines so abandoned, unless he declines so to do within six months on being duly put in default on behalf of the surface owner, after any ore has been discovered in workable quantities. R.S.Q., 1925, Ch. 80, Sec. 8."

The right of preëmption may be considered as the preferential right to the mines granted to a person or persons.

Section 9a which was repealed a short time after it was assented to read as follows:

"Sec. 9a:- All persons other than the owners of the land who claim mining rights abandoned by the Crown under the provisions of section 9 and all owners of mining concessions followed by letters patent issued before the first of July, 1911, must before the first of October, 1951, cause their titles to be registered if they have not already been registered, or, in the opposite case, renew the registration thereof, at the office of the registration division where such mining rights or mining concessions are situated.

> In the case of any mining right or mining concession contemplated by the preceding paragraph the registration of which has not been so effected or renewed before the first of October, 1951, the mines shall, from such date, again become the property of the Crown in right of the Province.
>
> The renewal of registration prescribed by this section shall be effected in conformity with article 2131 of the Civil Code.

In virtue of section 10 of the Act, every grant of land made previous to the 24th of July 1880 by location ticket for which letters patent or similar titles were not issued or were not issued until after the above mentioned date, the gold and silver mines only shall belong to the Crown, if it was established before the 1st of January, 1921, that on the 24th of July, 1880, the person who acquired such lands or his assigns had fulfilled all the conditions of the location ticket and that the letters patent or other titles to the same effect might have been issued.

In accordance with our Mining Law in force at the time, the owner of a location ticket had to fulfill the conditions of the location ticket before letters patent were granted him. The provisions of Sec. 10 set the last day of December 1920 as being the final day on which application could be made. A person could before the 1st day of January 1921 claim all Mining Rights with the exception of gold and silver mines, as abandoned by the Crown to the owner of the surface on the condition that he had obtained letters patent before 1921 and that as of the 24th of July, 1880, the conditions of the location ticket had been satisfied.

CHAPTER III

TYPES OF MINING RIGHTS

SECTION 1 - THE PROSPECTOR AND THE STAKING OF MINING CLAIMS.

A) The Prospector in the Province of Quebec

The subject of Mining Law cannot be examined without bringing to the fore the Prospector and his problems, and the laws that apply and govern him, restrict or encourage him. The Prospector is the forerunner of most of our great mining fields. Without him, Canadian mining would have taken years to arrive at its present important position in the economy of our country. From the first days of mining in Europe to our day, one observes how for a time the Prospector was allowed full and complete freedom of movement, enjoyed full ownership of the minerals he discovered followed by a period during which he was considered as a serf to be used to the advantage of the Kings and Nobles. We think to-day of the old Prospector as a man with a pick and a pack ambling through uncharted lands while in the medieval days, he was visualized with a divining rod.

Agricola, in his De Re Metallica, declares that:

> "all alike grasp the forks of the twig with their hands, clenching their fists, it being necessary that the clenched fingers should be held toward the sky in order that the twig should be raised at that end where the two branches meet. Then they wander hither and thither at random through mountainous regions. It is said that the moment they place their feet on a vein, the twig immediately turns and twists, and so by its action discloses the vein, when they move their feet again and go away from that spot, the twig becomes onee more immobile."

The first Canadian Prospectors came from the Californian coast around the year 1853 where following the great gold discoveries

in California, they spread from San Francisco and Portland up the coast to what was then known as the Caribou District at the head waters of the Fraser River, where there and in the surrounding country, the Prospectors found a paradise of lodes and deposits of lead, silver, copper and gold. When nickel was discovered in Sudbury in 1887, silver in Cobalt in 1905, and gold in the Porcupine District in 1909, the Prospector became a more and more important person and as it was only the hardiest of individuals who dared spend months in the wilderness, each Prospector was able to cover large tracts of land without fear of competition until a discovery was made in a region which brought about immediate staking by hundreds of individuals. As stated briefly in the first part of this work, when gold was first discovered in California in 1848, there was no organized government. The miners drew up their own regulations and a code was drafted to provide for the size of the Prospectors' claim and the amount of work he had to perform on his claim so as to keep it.

With the passage of years and the disappearance of rich lodes which originally permitted the Prospector to exploit them himself without the necessity of seeking outside capital, the organized period of mining concerns came into being, with their mining engineers, technicians and ability to finance and mine low grade deposits. With the advent of the aeroplane, the frontier has retreated further and further for the Prospector, but although his numbers have diminished,

his importance has not. As T. A. Rickard states in his Romance of Mining,

> "the world has grown small and sophisticated; ore deposits have to be found not by stubbing one's toe against them but by induction from indirect evidence. To be successful today, the Prospector needs the aid of both science and capital. He must be a part of an organized system, which may be more effective, but assuredly is less picturesque."

As the purpose of mining law is to protect and govern the development of mines and also to encourage and stimulate the discovery of minerals, it is of the utmost importance that the Prospector who is the most important element in the pattern of discovery be protected and encouraged by our laws. Otherwise, it is probable that his claim will slowly but inexorably disappear. The Quebec Law must be examined historically so as to be able to understand our Act as it presently stands. It is useful to compare our law to some of the other Provinces and see what is helpful to the Prospector and what improvement could be made so as to help him benefit from the fruits of his labour.

We have, as stated in the first portion of this work, the situation that at the time of the Cession and up to the Quebec General Mining Act of 1880 the English Crown which inherited all the rights of the Kings of France to the mines and minerals.

In 1880, our Quebec Legislature passed the first general mining law pertaining to the prospecting and development of our mines, and it is this law which should be first considered as it lays down some of our present important principles of mining law.

The position of the early Prospector depended largely upon what minerals, if any, he was permitted to seek and protect by the staking of claims in what lands were "open" and for what minerals. A fuller treatment of these rights is found in the Chapter : NATURE OF MINING RIGHTS.

Before 1880, generally only the mining rights pertaining to gold and silver were reserved to the Crown (unless the contrary was specifically stated in the deed of sale) and all the other types of minerals belonged to the surface owner. With the passing of the 1880 law (1880, Ch. 12, Sec. 3) the principle was laid down that the mines below the surface were to be considered as separate from the surface:

> "It shall not in future be necessary, in any letters patent for lands granted for agricultural purposes, to mention the reserve of mining rights, which reserve is always supposed to exist under the provisions of this Act."

Sec. 4 permitted the surface owner of agricultural lands to purchase the mining rights situated underneath the surface of his land:

> "Every person who, up to the present time, has obtained by letters patent, for agricultural purposes, but with reservation by the government of the mining rights, any lot whatever forming part of the public lands of this province may, if he or his legal representative discovers and wishes to work a mine, purchase the mining rights so reserved by the government, by paying in cash to the Commissioner of Crown Lands, over and above the price already paid for the said lot, a sufficient additional amount to make up the sum of two dollars per acre, if for gold or silver, and one dollar per acre if for copper, iron, lead or other base metals."

Section 3 above corresponded with the Ontario law which at that time contained the same principle as for lands granted before 1908.

The law as it existed in 1880 permitted the purchase of what was then called a mining location by a person and although such mining location could not contain more than 400 acres, it applied to the "baser metals" as well as to gold and silver, but the law was incongruous in that although mining licenses were granted for only gold or silver, there had been for quite a few years a large amount of mining undertaken for metals other than gold and silver. Numerous references were made in the Act to the "baser metals" but gold and silver were the only ones considered important enough to require licenses. At the time of the said statute, the term "mining claim" pertained to gold and silver only, leaving the "baser metals" to be covered by the term "mining locations", of which very little is said in this statute. The above situation lasted until 1890 when the original Act was repealed. The law of 1880 dealt with licenses granted the Prospector for gold and silver and each differed depending on the Prospector's intention to mine on private lands or public lands for gold and silver. The private or public lands' gold or silver license was granted the Prospector for a period of three months upon his paying a fee of $2.00 for a private lands' license, while it cost him $4.00 to mine on public lands. Another interesting point about the law at that time was that no reference was made to a Miner's certificate to prospect

but referred purely to his licence to mine. The whole Act generally speaking concentrated on the treatment of gold and silver and very little is mentioned of other metals.

The attitude of the Authorities at that time was to sell mining locations if the minerals involved were other than gold and silver. If gold and silver were the metals considered, a licence would be issued so that the mining claim could be occupied and worked. There was very little interest in other metals. The holder of a mining licence under the above Act, who desired to mine on private lands, was obliged to have a notice served upon the private individual declaring that he, the petitioner, was the holder of a private land's gold or silver licence, as the case was, and that he intended to mine on the lands of such private person and that he was ready to assume the responsibility for all damages arising from such mining operations. The above principle served as the basis for our present articles on mining arbitration.

The licensee in virtue of his permit was allowed to stake out one claim upon unoccupied public lands and the claims varied depending upon whether they were for alluvial mines or for quartz mines. In the case of alluvial mines, depending on whether they were on the river, creek or place surface, the licensee would be allowed either 40 feet front by 80 feet in depth, 60 feet fron by 100 feet in depth or 100 feet square. On the other hand, if the claim was for a quartz mine, one person would be allowed a claim of 150 feet along a lead by 125 feet on each side thereof. Two or more persons were allowed up to 700 feet

in depth by the same width as for one person. Claims where practical were laid out uniformly and in quadrilateral and rectangular shapes. The Prospector, however, was obliged, upon laying out his claim, whether it was upon private or public lands, to give written notice within 30 days to the Mining Inspector indicating where the claim was situated along with a complete designation and description of the said claim, when and how he had staked it out, when it had become his property or the property of the Company he was acting for. The Prospector at that time was also restricted to one claim upon Crown lands unless permission was granted him by the Lieutenant-Governor to stake more than one.

Sec. 83 of the Act even gave a reward to the discoverer of a new mine in the form of a free licence which was valid for 12 months.

It is interesting to note that in the first days of gold, the Gold Mining Act of 1864 applied to both the alluvial and quartz mines, but it was really the alluvial mines which were prominent as they made up 75% of our gold mines at that time. Since then the position has reversed itself and it is from quartz mining that most of our gold is extracted.

By the Act 54 Vict. 1890, Ch. 15, Sec. 1455, a further step was taken in our mining law and for the first time since 1880, our law carried a section on "Mining Explorations and Exploration

Permits" thereby recognizing the importance of the Prospector, and Sec. 1455 read as follows:

> "Every person, firm or company may explore and prospect for the discovery of mines and minerals upon public lands not already occupied as mining concessions or otherwise."

Sec. 1406 contained the following:

> "Any person, firm or company may obtain from the Commissioner an exploration permit, with a right to make all necessary works, to establish the mining value of any land."

To obtain the above permit, the Prospector or the firm or corporation was obliged to furnish an exact description of the land required to the satisfaction of the Commissioner and accompany his application with the following fees:

1) If the mine was upon private lands, $5.00 for every 50 acres;
2) If the mine was upon Crown lands, $10.00 for every 50 acres.

The idea of furnishing security for damages and notifying the Commissioner within one month as established in 1880 and 1888 was again approved. But while the Mining Licence as referred to in the 1880 statute allowed the individual to "mine", the exploration permit of 1890 (Sec. 6) on the other hand entitled the individual to "explore and prospect for the discovery of mines" in one section, and in section 9 the permit pertained to the right "to explore and to mine" which seems quite contradictory but can be explained by section 1458 which states:

> "The holder of such permit (exploration permit) may afterwards purchase such mine by paying the price mentioned in this law and by complying therewith and with the regulations made thereunder; the whole subject however to the right or preference allowed to the proprietor of the surface, to the exclusion of any other, to acquire the mines and minerals found, or that may be afterwards found under the surface of his property."

Section 9 was really the forerunner to our present sections on development licences.

In 1892, 55 Vict., Ch. 20, added a provision to the above by dividing Crown lands into surveyed and unsurveyed territory:

1) In surveyed territory, $5.00 for every 100 acres, every less number of acres to count as 100;

2) In unsurveyed territory, $5.00 for eadh square mile.

Section 1452 of 55-56 Vict., Ch. 20, however stated:

"Any person, firm or company may without a licence prospect and search for mines or ores upon public lands not already occupied as mining concessions or otherwise",

but the law provided also that any such person, firm or company who desired to enjoy the benefit of such licence could obtain same under certain conditions.

A further amendment was made in 1907 as to the area that a person detaining a prospecting licence could work in unsurveyed territory:

"No prospecting licence shall be granted to the same person, covering more than 25 square miles in unsurveyed territories, or more than 30 lots of 100 acres. The holder who shall have transferred his licence wholly or partially may obtain another for an extent equal to the part transferred. The licences now in force shall nevertheless be renewable, in the discretion of the Minister, until the first day of January 1908, whatever may be the extent and situation of the lands covered by them."

In 1909, Sections 1452, 1453, 1454 and 1455 of 55-56 Vict. were replaced, and the term "prospecting and exploration permit" was replaced by the term "Miner's Certificate" which was defined as

"the authorization granted to any Prospector for mines generally on all lands on which the mining rights belang to the Crown, and to stake out claims."

A fee of $10.00 was made payable to the Department in return for which a Miner's Certificate was given to the applicant which was valid from the date of issue to the first day of January next following. Section 1455 stated the following:

> "Any person holding a Miner's Certificate may prospect on all public lands surveyed or not surveyed, or on the lands of private persons where mines are reserved by the Crown, but not on any land that is the subject-matter of a claim, or that is under mining licence or that is withdrawn from mining operations by competent authority."

Nevertheless if the bearer of a Miner's Certificate desired to prospect on the land of private persons, he was obliged to give good and sufficient security to the satisfaction of the Minister, that he would answer for all injury or damage which he may cause to the surface owner while so prospecting.

Our present Quebec Mining Act defines "Miner's Certificate" as meaning the authorization granted to any Prospector to prospect for mines generally on all lands on which the mining rights belong to the Crown, and to stake out claims.

This definition is derived from the 1909 Act, 9 Ed.VII, Ch. 27, while previously in 1880 the only reference to a certificate was the licence granted a miner to work a mine, and this was much more all-embracing than a Prospector's Certificate as granted today.

In 1890, with the repeal of the 1880 Act, the words "prospecting or exploration and mining permit" appeared for the first time and were defined as meaning "the permit obtained for the purpose of ascertaining the mining value of any land." This definition however was repealed in 1892 by 55-56 Vict., Ch. 20.

The word "claim" was defined in the 1892 Act as meaning "the land between the stakes surrounding a discovered mine", and this definition has stayed with us to this day. The 1880 definition was "a parcel of land taken possession of under this Act for mining purposes", and seems to be a better definition as our present one could certainly leave out the term "surrounding a discovered mine", due to the fact that our definition of mines includes nearly everything in the soil.

From a practical viewpoint, it can be said generally that the Prospector who stakes a claim has usually seen something interesting on the claim which he hopes will turn out to be important enough to be considered as a discovery. It would appear however that the term "discovered" is loosely used. There is no mention of the word in the notice that the Prospector files with the government so as to obtain a certificate of the recording of the claim, and the Department of Mines does not require any proof of a discovery before allowing a claim.

The principles of staking as briefly laid down in 1888 R.S.Q. were amended by 9 Ed.VII, 1909, and now serve as the basis to our modern law of mining. Originally the claims were laid out in quadrilateral and rectangular shapes, but this was changed by the above Act to rectangular claims. The holder of a Miner's Certificate was allowed to mark out on the ground in unsurveyed territory one or more rectangular claims, not exceeding 5, with sides running northward and southward, and eastward and westward, each covering at least 40 acres and not more

than a total of 200 acres in area. This was done in the following manner (Sec. 1456):

"1) By planting a squared stake on a prominent point, indicating the discovery. Such stake shall bear, in very legible characters, the name of the discoverer, the number of his certificate and the date of the discovery;

2) By placing at the apex of each angle of the lot aforesaid, stakes numbered 1, 2, 3 and 4, the stake nearest the north-east point bearing the number 1, then nearest the south-east point, bearing the number 2, and so on;

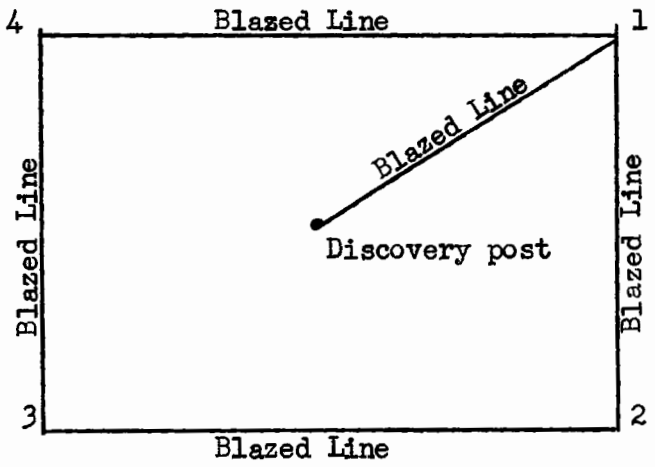
3) By putting on stake number 1, the inscriptions of the discovery stake and indicating the distance between those stakes;

4) The lines between such stakes, including that connecting the discovery stake with stake number 1, shall be visibly cut or indicated on the ground;

5) If it is impossible to plant a stake at one of the angles, owing to the configuration of the ground, such stake may be put at the nearest practicable point, by putting the following inscription on it: W.P. (Witness Post) or P.I. (Piquet Indicateur) and an indication of the distance in the direction of the true point;

6) The length of the stakes shall be about 4 feet above the soil and then about 4 inches;

7) The following diagram gives the description of a claim marked out according to the above method:



In surveyed territory, the Prospector was more limited than in unsurveyed territory and he was only allowed to stake out one or 2 claims of 100 acres or of one lot each by placing one picket at the place of the discovery in the same manner as for claims in unsurveyed territory. These were the major changes effected in the law by the above Act. The Prospector was still obliged to give notice to the Department of Colonization, Mines and Fisheries or to the local office of the Department. Originally, he was obliged to take out a Prospecting and Exploration Permit which lasted for only 3 months and then, if interested, he effected the purchase of the property. After 1909, he was obliged to obtain a Mining Licence within 4 months from the date inserted on the stakes, on pain of forfeiture of all his rights and privileges. To obtain the above licence, he was obliged to furnish the required fee and rent as well as attach to his application a description of the lot and an accompanying sketch of the nearby landmarks, as well as a declaration signed by him stating that such lot had not been previously staked, or was not already under a Mining Licence. The above is certainly a far cry from the original Act which entitled a person to only one claim on Crown land and pertained to only gold and silver instead of the present 5 claims which cover all metals.

By a 1910 amendment (1 Geo.V, Ch. 17, Sec. 9), the rectangular claim was further qualified by adding, after the words "rectangular claims", "of not less than 20 chains in width" and this amendment has stayed with our law to this day.

Section 2127 of the R.S.Q. 1909 was amended by changing the words "one or two claims" to "one or two lots".

By the Act 14 Geo.V, Ch. 31, the Prospector was allowed to protest the legality of any claim staked as long as he did so within 15 days of the recognition of the claim by the Department. The Minister had full jurisdiction to decide whether the protest should be acted upon or not.

From the original idea of quadrilateral and rectangular claims to rectangular ones, we proceed finally to square claims (although in the 1925 R.S.Q., Ch. 80, a rectangular claim is shown as an illustration of how a square claim should be marked out) in 1924 (14 Geo.V, Ch. 31) with sides of 20 chains in length. The explanation of why the amount of 20 chains was chosen is that when the side of 20 chains is squared, it gives an area of 40 acres.

The law as to what land was stakeable in surveyed territory as laid down in Section 2127 of the R.S.Q. 1909 and amended by 1 Geo.V, 1911, (1st session), Ch. 17, Sec. 10, was further amended by Sec. 6 of 14 Geo.V, 1923-24, Ch. 31, so as to include the idea of quarter lots when the claim was composed of lots of over 120 acres:

> "In the case of lots of over 120 acres, the claim may comprise a quarter lot only, as the northeast quarter, the southeast quarter, the northwest quarter or the southwest quarter, as the case may be."

The Prospector would therefore have, if he so desired, either 4 half lots totalling 200 acres or 8 quarter lots totalling 200 acres. The intention of the Act was that if one takes one half of 120 acres, the

claim is large enough, while in those lots of over 120 acres, a claim would not be too small if it only formed a quarter of the lot. This section therefore was brought into force so as to prevent too small a claim.

To render the task of the Prospector easier, the holder of a Miner's Certificate in virtue of Sec. 7 of the above Act was allowed to mark out claims in the names of other persons (who had Certificates) with the proviso that the claims could not exceed a total area of 400 acres a year. An important restriction which is often ignored and has caused many a headache to mining people was that the notice of such claim had to be signed by the person who did the staking on the ground and had to contain amongst other things the numbers and dates of the mandators and of the mandatory's Miner's Certificates.

Section 9 of the Act provided further for the protection of those interested in claims and in particular for the individual Prospector by making the markings on the angle stakes more complete, and by allowing anyone to abandon his claims upon giving written notice to the Department.

Section 9 brought in the following sub-sections:

2130a : - "Every holder of a claim shall, within 3 months of the date marked on the stakes, affix to each angle stake on his claim a metal plate bearing the number of the claim. Such plates shall be supplied to him by the Department."

2130b : - "Every holder of a claim may, at any time, abandon his claim upon giving a written notice of the abandonment to the Department and by returning the metal plates containing the number of his claim."

2130c : - "Any land forming the object of a claim or of a licence to operate, which has been abandoned, can only be re-opened for prospecting and staking after a delay of 15 days from the abandonment or from the expiration of the claim or licence so abandoned or expired."

The notice which the Prospector was obliged to give the Department "without delay" in virtue of the Revised Statutes of 1909, was amended to read "within 15 days of the date marked on the stakes". In the case of claims situated more than 50 miles from a railway in a straight line, an additional delay of 1 day for each additional 10 miles or fraction thereof was allowed.

Since the 1925 Revised Statutes, the Prospector who had staked out what he was allowed by law (Secs. 60 and 61 of the Quebec Mining Act) could stake out further claims if he obtained either his Development Licence or his Mining Permit, otherwise he was obliged to stake out the claims as a mandatary and, as stated previously, he could not stake as a mandatary more than a total area of 400 acres per calendar year. By an amendment, this was extended to 800 acres in the case of lands situated at 100 miles or more from a railway or a highway. The above was however changed by a recent amendment (14 Geo.VI, Ch. 27, Sec. 1) to read:

"Any holder of a Miner's Certificate may stake out claims as mandatary of other holders of like Certificates, up to a total of 400 acres per year and, in the case of lands situated north of the 50th degree of north latitude, up to a total of 800 acres per year, these provisions apply to the staking out of claims under Sec. 85, but in such a case, the total area staked out as mandatary shall not exceed 2560 acres per year."

The person also who had staked out all he was allowed could abandon or dispose of what he had staked and could obtain a new Miner's Certificate free of charge. This new Certificate however did not entitle him to stake in the name of other persons.

The reason for not allowing the holder of the new Miner's Certificate to stake out claims in the names of other persons is very logical as the Prospector is allowed one Certificate a year, which allows him to prospect on up to 200 acres for himself, and up to an additional 400 acres as a mandatary (800 acres if above 50° of noth latitude). This right is considered as a privilege granted the Prospector and if he decides to cede, sell or transport his claims, then he should not be entitled to stake again for other people. The purpose obviously was to stop the abuses which would result from his being allowed to stake out new land the year around in the names of different people.

The law however assists the Prospector by allowing him to stake out other claims as soon as he has obtained the Development Licence contemplated by Section 75.

The obligation to take out a Development Licence at the end of the year allows the Prospector to develop the property, which in turn benefits the Crown. The necessity of obtaining a Development Licence puts a damper on those individuals who would like to stake everything with the hope of hitting one claim that might be of value. This precept falls in line with the Government's view of having the land developed by as many people as possible and of ultimately protecting

the public against fabulous promotions based on large land holdings.

In Section 64 of the Act, as amended by Chapter 27 of the Statutes of Quebec 1950, one finds an unusual, and to the writer an illogical situation, for it is stated in that Section that the Prospector can stake in the name of other persons (including companies) an area up to 800 acres (above 50° of north latitude) while the Prospector in his own name is not allowed to increase the size of his claims. The reasoning should be that due to the difficulty of reaching the districts above 50° of north latitude not only should the Prospector be allowed to stake in a year 800 acres in the name of others but also that he should be allowed to stake a larger claim for himself. The only plausible explanation for this Section as presently drafted is that it is only persons of means that can afford to finance a trip into these difficult regions due to the great expense and that is why the law encourages them.

Section 74 of our present Act states:

> "Every mining inspector or other official appointed in virtue of this Act, as well as every assistant of such inspector or official, who discovers minerals of value on lands, the mining rights of which belong to the Crown, shall stake or mark, on behalf of the Crown, a claim of the form and area prescribed by law and may proceed to such staking without being the holder of a Miner's Licence. Any such person may also, notwithstanding the provisions of Section 73, upon instructions from the Minister, stake out any land which had been the object of any lapsed or abandoned claim or licence."

The lands or claims staked out "for the Crown" may be worked, leased or sold by the Crown or worked by private persons according to agreements or arrangements between such private persons and the

Crown, for such prices and upon such terms and conditions as may be fixed by order-in-council. Section 157 states emphatically that no officer appointed under the Act can take an interest in the working of a mine either directly or indirectly.

The Department of Mines has no record of any claims ever having been staked out by the Crown and then leased to private individuals or worked by them for the benefit of the Crown. There are known cases however of the Crown staking out claims and then auctioning them off (a public auction was held in Abitibi recently). The whole purpose of this section was to give the Crown the right to stake claims where it considered it necessary in the public interest. In Senneterre, the Government ran into numerous difficulties when it attempted to enlarge its airport, for it found that all the land around the airport had been staked as claims by individuals who had heard of the Government's intentions of enlarging, although the land had been proven valueless from a mining viewpoint. Consequently, the Government was forced to buy up these so-called claims or wait until they lapsed so as to take them up. Art. 227, Section 7, of the Act permits the Lieutenant-Governor in Council <u>to reserve from staking</u> that land which it considers necessary for the establishment and erection of smelters, mills or refineries, for the construction of railways or tramways, or for the development of water-powers or for any other purpose.

As to the contents of the notice, the only difference between our present law and that contained in the 1925 law was the

addition of the self-explanatory clause that the notice be

> "accompanied by a declaration under oath and the Miner's Certificates of the mandator and mandatary in order to enable the Minister to make such entries thereon as he may deem useful."

By a 1928 amendment to Sec. 48 of the 1925 R.S.Q. (18 Geo.V, Ch. 32), the discovery post as used as a reference point in the description of a claim at that time was eliminated.

In 1930 (20 Geo.V, Ch. 41, Sec. 15), an amendment was introduced into the Act whereby the name of the discoverer, the number of his Certificate and the date of the staking was to be put on every stake, not only on the first one as was the case before.

In our present law, the Prospector who has staked a claim in accordance with the provisions of the Act has a right to keep the said claim for a period of 12 months (Sec. 75, 1941, Ch. 196, as amended) from the date marked on his stakes. If his claim is more than 100 miles in a straight line from a railway, his claim is valid for a period of 2 years. At the end of the 12 months' or 24 months' period, the Prospector is obliged to obtain a Development Licence. For the first year, there are no fees to be paid to the Government. The Prospector must on pain of forfeiture of all his rights, obtain during the above period or within 10 days of the expiry of the said period, the said Development Licence. The Prospector is obliged before making his application for a Development Licence to have performed sufficient work on his property to be equivalent to a minimum of 25 days of 8 hours each on each 40 acres or fraction of 40 acres

(for claims of less than 20 acres, 12 days of work are acceptable). The Prospector is however allowed in the case of 5 contiguous claims to concentrate his work on one of these claims. Sec. 82 gave the Minister the right in certain cases to extend the above provision to larger group of claims but not exceeding 15 contiguous claims.

By the 1925 R.S.Q., Ch. 80, Sec. 58, the Prospector was obliged to obtain his mining licence within a delay of 6 months, this delay however did not run during the months of January, February and March. In 1926, the months of April and December were added. Then, by a 1928 enactment, the specific months during which the delay did not run were struck out and the 6 month period was extended to 12 months (which is our present law).

The principle that the Prospector must do a minimum of 25 days of 8 hours has existed in our law since 1 Geo.V (2nd Session) 1911, Ch. 23, Sec. 5, amending Sec. 2131 of the 1909 R.S.Q., and Sec. 11 of 1 Geo.V, Ch. 17. This is established by

> "a solemn declaration attesting that such lot has not been previously marked and is not under a Mining Licence, and giving the names and the date of the inscriptions on the stakes as well as the number of his Certificate, and showing that he had made or caused to be made thereon, prospecting or development work equivalent to twenty-five days of eight hours each, the whole according to form H."

The very logical principle of allowing a longer delay to the Prospector if he was working at a 100 miles from the railway was introduced in 1929 (19 Geo.V, Ch. 26, Sec. 4).

With regard to the age of the individual receiving the Miner's Certificate, the law states that he must be 18, so as to apply for one

(Sec. 53) and that although he is considered as a minor until he has reached the age of 21, he is for any matter connected with the Act considered as if he had the same rights and is subject to the same obligations as if he was of the full age of 21.

So as to protect the Cities, Towns and Villages, the 1909 Act 5 Geo.V, 1915, forbade the staking, marking, occupying or acquiring as mining lands of which the mining rights belong to the Crown, of all lands set aside by the Crown as village or town lots as well as those lands subdivided into building lots which had been entered as such by the recognized owner, and of lands lying within the boundaries of a City or Town duly incorporated as a Municipality.

By a 1949 amendment (13 Geo.VI, Ch. 57, Sec. 1), the following lands were excluded also:

> "The lands alienated by the Crown under the Water-Course Act (Chapter 98) for the development of hydraulic power, nor any land situated less than 3 chains from those so alienated."

In virtue of "An Act respecting National Parks", R.S.Q. 1941, Ch. 156, as amended by Ch. 25, 7 Geo.VI, prospecting was not allowed in the Laurentide National Park, Trembling Mountain Park, Gaspesian National Park and Mount Orford National Park. There are also a few islands in the Counties of Rimouski and Riviere du Loup on which it is forbidden by statute to stake.

Ever since the year 1910, the Crown had had the authority to prospect on lands where the mining rights belonged to the Crown and to stake claims in the manner indicated by the law and these claims could either be worked by the Crown or by authorized persons.

An interesting section was brought into force in 1937 to stop individuals or companies battling over pieces of land which had not been staked and which were situated between or adjacent to staked claims. It was also a method of stopping individuals from "nuisance staking". McDougall, in his volume entitled Quebec Mining Law, at page 57, states:

> "It frequently happens that a group of claims supposedly staked as contiguous to each other is found to be divided into 2 groups by an unstaked fraction. The staking of this fraction by a third party, if allowed, would reduce the value of the whole which as a result of the division could not be worked as one "property".

The said section of 1937, as amended now, permits the Minister to refuse to recognize the claim as staked:

> "In surveyed territory as in territory unsurveyed, every parcel of land situated between claims already staked out, or adjacent to such claims, may be staked out in accordance as much as possible with the provisions of this Act, but the Minister may refuse recognition thereof if the applicant has no interest in the adjacent claims, or he may, in his discretion, divide the parcel of land between the holders of adjacent claims in such proportion as to him may appear just."

Sec. 65 of the Act obliges the holder of a Miner's Certificate who begins staking out a claim to complete same before staking out a second claim. What often happens in practice is that the Prospector, instead of affixing the first metal plate on the stake nearest the north-east point and from there going to the southeast point for his number 2 stake and then carrying on to 3 and 4, usually stakes the whole north side of his claim or claims, then does the south side and finally the east and west extremities.

Although it has been suggested that the law should be amended

> "to permit the staking of a group of claims by placing the stakes at the four corners of the group then laying out each of the claims by running the side lines, would be advantageous. An amendment of this nature would save the Prospector much retracing of his steps" (1),

it is the opinion of the writer that this change might confuse the ownership of the claim. In terrain which would be open, stakes at every 200 acres would be easily identifiable but in mountainous or wooded areas, it would be most difficult to establish the whereabouts of the stakes. In the early days, stakes were placed at great distances apart but the present 40 acre claims appear to constitute sounder practice.

B) The Prospector in the other Provinces

At the end of the first World War, the Provinces of Ontario, New Brunswick, Nova Scotia and British Columbia each had their own laws. The Canadian Government until 1930 administered the natural resources of Manitoba, Alberta and Saskatchewan while Prince Edward Island is not referred to as there is no Mining Act in that Province, due to the lack of mining operations. The Federal Government presently legislates over the mining operations of the Northwest Territories and Yukon, as well as all Indian lands and the National Parks.

(1) E. Stuart McDougall, Quebec Mining Law, Montreal, Kingsland Co. 1938.

The Prospector in all other Provinces, with the exception of Alberta, where the Prospector is not obliged to pay a fee so as to prospect on those lands which are available, is obliged to pay a yearly fee for his Prospecting Licence ranging from $5.00 in Ontario, Manitoba, Saskatchewan, Newfoundland, to $10.00 in New Brunswick and Nova Scotia. In British Columbia, although it is called a "free Miner's Certificate", the Certificate still costs the individual $5.00 and a Company $50.00 if its capitalization is below $100,000.00 and $100.00 if more than $100,000.00. Ontario and Manitoba also distinguish between the applicants who are natural persons and those which are companies. In Manitoba, the individual applying for a "Miner's Licence" is obliged to pay $5.00 a year while a company must pay $75.00; an Ontario Company must pay for the same licence either $10.00, $25.00, $50.00 or $75.00 yearly, depending on its capital structure. Nova Scotia charges the same fee of $10.00 to all and the Prospector in that Province is obliged to specify the tract of land of claim applied for before obtaining a Prospector's Licence. The Company or mining syndicate are each entitled to only one Licence.

Generally speaking, all these other Provinces have yearly "Miner's Licences", "Miner's Permits" or "Miner's Certificates" which must be renewed each year on pain of forfeiture. These Licences, Permits or Certificates are valid in the case of Ontario and Manitoba until the 31st of March, while in Saskatchewan the date is the 30th

of April, British Columbia the 31st of May, New Brunswick the 31st of October and Newfoundland the 31st of December. It is considered that Nova Scotia's system of issuing the Certificate valid for one year from the date thereof is most practical.

It is interesting to note that Ontario and New Brunswick have the same clause as to age as Quebec. They both allow a person of 18 and over to apply for a Prospecting Licence with the stipulation that the said Licensee under the age of 21 shall, in respect of all mining claims or mining rights and all matters and transactions relating thereto, have the same rights and be subject to the same obligations and liabilities as if he were of full age. Nova Scotia on the other hand allows "any number of persons" to apply for a Licence. Its Minister may, in his discretion, refuse the application. The other Provinces simply mention that the applicant must be 18 years of age.

As to renewals of the "Miner's Licence" and the transfer thereof, the Provinces vary from charging a fee equal to the first year's fee or by charging less. Ontario has an unusual clause which allows the Prospector who has held his Licence continuously for 25 years to renew the Licence without payment of the normal fee. As for the transfer of rights to the Miner's Certificate, Nova Scotia does not allow such a transfer without the permission of the Minister. Some Provinces allow it upon payment of a stipulated fee and others, such as New Brunswick, allow the transfer without any payment.

Most of the Provinces have followed Ontario in stating that no person or company shall apply for or hold more than one Miner's Licence. Newfoundland, however, charges $5.00 for a Miner's Permit and allows the Prospector to stake any number of claims on behalf of a company that is also the holder of a Miner's Permit. It would appear that this right should only be allowed as long as there are large tracts of land to dispose of. It is apparent that the above provision was only enacted to encourage prospecting in that Province. When the Government eventually considers that there is sufficient land either under development or under licence, this clause will probably be modified.

C) Mining Claims and the Staking Thereof

When one examines the definition of the word "claim" or "mining claim" with reference to the Mining Acts of the various Provinces, one finds that probably the best definition of the word is contained in the Mining Act of Saskatchewan in which it is defined as "a plot of ground staked out and acquired under the provisions of this Act." The Nova Scotia Act is most vague in that a "claim" is defined as meaning a "mining claim" while the word "mining claim" is not defined, making it extremely difficult to understand what is meant by a claim. Quebec's definition has been dealt with on page
Some of the other Provinces have no definition of the word "claim".

With the obtaining of a Miner's Licence, Permit or Certificate, the Prospector is entitled to prospect for minerals and stake out a claim, and the obvious question is where.

In Ontario, he is entitled to prospect and stake on Crown lands, surveyed or unsurveyed, as well as on lands, the mines, minerals or mining rights whereof have been reserved by the Crown in the location, sale, patent or lease of the said lands when the same have been located, sold, patented or leased after the 6th day of May, 1913. This right of the Prospector extends only to lands however that have not been staked or recorded as a mining claim and which have not lapsed or been abandoned, cancelled or forfeited or withdrawn by any act, order-in-council, or other competent authority from prospecting, location or sale, or declared by any such authority to be not open to prospecting, staking out or sale as mining claims.

Manitoba is similar to Ontario but does not contain the specific reservation as of the 6th day of May 1913. Saskatchewan has the same provision as Ontario for prospecting on Crown lands, but refers only to prospecting for gold and silver on other lands.

Nova Scotia obliges the Prospector to specify the tract or claim applied for and, upon obtaining his Licence, he can only prospect for the minerals which are defined by the Licence within the area claim or tract referred to in the Licence.

With reference to the lands that are excluded by Government Order from staking, every Province differs, but it is important to examine these so as to compare them with the Quebec Mining Act which

contains only a few specific exclusions. Under the Act, the Lieutenant-Governor in Council has a general power to make any regulations which are deemed necessary for

> "reserving and restraining the staking out of any land which, in his opinion, may be required or necessary for the establishment and erection of smelters, mills or refineries, for the construction of railways or tramways, or for the development of water-powers or for any other purpose" (Sec. 227).

It is considered that the Lieutenant-Governor in Council should have certain well-defined powers so as to remedy situations in which hardships would exist without a specific and speedy remedy. This power should however be restricted where it is obvious that certain areas should be excluded. A list of definite exclusions such as is contained in the Ontario law may be advisable.

Peat and marl cannot be extracted in Quebec unless the right to do so is granted by special licence so as to encourage the farming industry which is in great need of marl. As the Provincial Government is presently planning for the future production of peat, it is only on rare occasions that extraction of peat is allowed. For example, the Act 5 Geo.VI, Ch. 36, is entitled

> "An Act to promote by means of a premium the development of peat-bogs."

Saskatchewan has an unusual law which permits the Minister, upon payment of the sum of $500.00, to withdraw from staking such area or areas when satisfactory proof has been established, to the satisfaction of the Minister, that a person is prepared to incur large expenditures. This applies only to certain desolate regions which have proved so far

unsatisfactory from a mining viewpoint.

The Ontario Act contains the following exclusions: (Secs.38-39-40-41)

"1) No mining claim shall be staked out or recorded upon any land transferred to or vested in the Ontario Northland Transportation Commission, without the consent of the Commission, nor except with the consent of the Minister upon any land, -
   a) reserved or set apart as a town site by the Crown;
   b) laid out into town or village lots on a registered plan by the owner thereof;
   c) forming the station grounds, switching grounds, yard or right of way of any railway, electric railway or street railway, or upon any colonization or other road or road allowance.

2) No mining claim shall be staked out or recorded on any land, -
   a) which, without reservation of the minerals, has been sold, located, leased or included in a licence of occupation; or for
   b) which a bona fide application is pending in the Department of Lands and Forests under the Public Lands Act or under any regulation made under that Act or under any other Act or regulation; or
   c) which has been reserved or set apart by the Department of Lands and Forests for summer resort purposes, except where the Minister of Mines certifies in writing that in his opinion discovery of valuable mineral in place has been made; or
   d) where the Minister of Lands and Forests or the Minister of Highways certifies that land is required for the development of water-power or for a highway or for some other purpose in the public interest and the Minister of Mines is satisfied that a discovery of mineral in place has not been made thereon; or
   e) in an Indian Reserve, except as provided by the Indian Lands Act, 1924.

3) 1) Notwithstanding that the mines or minerals therein have been reserved to the Crown, no person or company shall prospect for minerals or stake out a mining claim upon that part of any lot used as a garden, orchard, vineyard, nursery, plantation or pleasure ground, or upon which crops which may be damaged by such prospecting are growing, or on that part of any lot upon which is situated any spring, artificial reservoir, dam or waterworks, or any dwelling house, outhouse, manufactory, public building, church or

cemetery, except with the consent of the owner, lessee or locatee of the surface rights, or by order of the Recorder or the Judge, and upon such terms as to him may seem just;

2) If any dispute arises between the intending Prospector and the owner, lessee or locatee as to land which is exempt from prospecting or staking out under sub-section 1, the Recorder or the Judge shall determine the extent of the land which is so exempt.

4) A water-power lying within the limits of a mining claim, which at low water mark, in its natural condition, is capable of producing 150 horsepowers or upwards, shall not be deemed to be part of the claim for the use of the licensee, and a road allowance of one chain in width shall be reserved on both sides of the water together with such additional area of land as in the opinion of the Recorder of the Judge may be necessary for the development and utilisation of such water-power.

Section 42 of the Act states:

5) 1) The Lieutenant-Governor in Council may withdraw any lands or mining rights the property of the Crown from prospecting and staking out and from sale or lease.

Manitoba and Alberta are very similar to Ontario in their lists of exclusions.

D) Size and Number of Claims

A claim in unsurveyed territory in Quebec covers 40 acres of ground while one in surveyed territory may cover one or 2 lots of 100 acres, or half lots such as the north half, the south half, the west half or the east half, as the case may be, provided that the total area of land staked out as one claim shall not be more than 200 acres. In the case of lots of over 120 acres, the claim may comprise a quarter lot only, such as the northeast quarter, the southeast quarter, the northwest quarter or the southwest quarter.

In Ontario, the basic unit is 40 acres for mining claims in unsurveyed territory and not situated in a special mining division while in the same division but in surveyed territory the size of the mining claim will vary, depending on whether the township is surveyed into lots of 640, 320, 200, 150 or 100 acres. In a special mining division in unsurveyed territory, the basic unit is 20 acres while in surveyed territory the size of the mining claim will depend on whether the township is divided into 640, 320, 200, 150 or 100 acre lots; where lots are of 200 acres a claim shall be 25 acres or thereabout, if of 150 acres the claim shall be 18 3/4 acres and in a 100 acre division, the claim shall be 25 acres.

Saskatchewan is the only other Province that differentiates between surveyed and unsurveyed territories and considers a claim in unsurveyed territory as being 51.65 acres (sides of 1500 feet) in size and a claim in surveyed territory as being 40 acres.

New Brunswick, Nova Scotia and Newfoundland all consider a mining claim whether in surveyed or unsurveyed territory as being 40 acres, while British Columbia uses a unit of 51.65 acres.

As for the number of claims that can be obtained during a year by a person, all Provinces again vary. Ontario allows 9 claims to a person and Manitoba the same amount with the right to have them registered in other persons' names. Alberta also permits the applicant up to 9 claims, but states that the Prospector can only have 5 claims in his own name and up to 2 claims each for not more than 2 other persons.

Furthermore, the Act enforces the ruling that any person who has located and recorded a claim shall not locate another claim in his own name or in anybody else's name for a period of 20 days from the date of such location.

Saskatchewan is more tolerant and allows the Prospector 9 claims a year in each of the 8 mining districts, and the Prospector can either stake all the claims in his name or he may stake up to 3 claims for each of 2 other licensees and the remainder for himself.

New Brunswick allows an individual to stake up to 10 claims in his own name and the same number for another holder of a license while Nova Scotia permits the staking of 16 contiguous claims composed of 4 North and South claims and 4 East and West ones. Newfoundland, on the other hand, allows any number of claims to be staked by the individual Prospector on behalf of a company that has a Miner's Permit.

British Columbia allows the Prospector to stake up to 8 claims yearly within a radius of 10 miles with the stipulation that he can acquire other claims by purchase.

For staking purposes, 4 stakes are usually put at the 4 corners of the claim, with the exception of the Provinces of Alberta and British Columbia, which use a 2 post system. In Alberta, the posts are placed at each extremity of the location line. In British Columbia on the first post is given the compass-bearing of the second post. A blazed line in timbered country is used to define the line from the first to the second post, while in bare country, piles of rock or earth are used. The 2 post system is <u>inadvisable</u> as it is more difficult

to localize in certain areas than the 4 post system. Blazing is also used in both Ontario and Manitoba as well as in Quebec to define the limits of a claim.

By a 1952 amendment to Sec. 227 of the Quebec Act (15-16 Geo.VI, Ch. 49), the Lieutenant-Governor in Council was authorized to make regulations for permitting "in denuded and treeless places, the staking of the corners of each claim, by means of marks different from those presented by Section 60". This amendment was more than well received by mining men as many of our more recent mining discoveries have been made in terrain where it is extremely difficult and expensive to follow the normal rules as to staking.

Both Ontario and Manitoba have found a way to help the Prospector by inserting in their Acts a clause which allows every licensee who stakes out and records a mining claim to obtain from the Mining Recorder 2 free assay coupons on recording it and 2 additional free assay coupons on recording each 40 days' work thereafter.

Section 6 of the New Brunswick Act which is somewhat similar to the Quebec Act reads as follows:

> "No officer appointed under this Chapter shall directly or indirectly by himself or by any other person purchase or become interested in any Crown lands, mining rights or mining claims, and any such purchase or interest shall be void."

E) Work Required by Law Upon Claims

To oblige the Prospector to open up his "claim" so that he may benefit eventually and in so doing benefit the country, the various

Provinces have all enacted varying laws which declare that the holder of a mining claim must perform a certain amount of work on the property over a certain length of time.

Ontario, Manitoba and Newfoundland have similar provisions in that they provide that the work be performed over a five-year period. Ontario obliges the individual holder of a mining claim to perform 200 days' work of not less than 8 hours per day during the above period, as stated previously. This work is done in 5 periods of 40 days each year although the work can be completed in a less period of time if the holder so desires.

In Manitoba, the licensee does not calculate his work on an hourly basis but on a quantity basis. Sec. 52, 1940 R.S.M., Ch. 36 provides

> "a) trenching, shaft sinking and sinking test pits by removing 144 cubic feet of solid rock;
> b) stripping, shaft sinking and sinking test pits in overburden by removing 288 cubic feet;
> c) boring 35 lineal feet by diamond drill irrespective of the size of drill used or core recovered."

This is quite different from the work required by Ontario which not only is on a day's work basis but uses a different standard for measurements of work. For example, boring by a diamond drill shall count as work

> "where the core from the drill is less than 7/8 of an inch in diameter, at the rate of one day's work for each 2 feet of boring. If the core is larger than 7/8 of an inch, boring shall count at the rate of day's work for each foot of boring" (Sec. 81, R.S.Q., 1950, Ch. 236)

Work by a compressed air drill shall count as work at the rate of 2 days' work in respect of each man employed on the drill for each day of his employment. Ground surveys are counted as 4 days' work per man employed in the survey for each day of his employment, while airborne magnetic surveys are counted at a rate of 20 days' work for each mile of contiguous recordings. Power driven mechanical equipment equals one day's work for each $5.00 so spent.

In Newfoundland, 200 days' work of 8 hours have to be performed within 5 years but if the work is not done, the holder of a Permit can pay the Commissioner the equivalent of what was not done at the rate of $3.00 per day's work. With the payment or the work performed, he is entitled to a grant in fee simple. Manitoba, on the other hand, only grants a lease for 21 years which is renewable for the same period, while Ontario, upon completion of the above stated work, will grant either a lease or letters patent to the claim. Both Manitoba and Ontario allow an extension of time upon proof of illness.

In Alberta, the Prospector, upon obtaining a Certificate of record, is entitled to hold his claim for a period of one year and from year to year upon payment of the fee as long as he performs $150.00 worth of work every year (Sec. 97 of the Mines and Minerals Act.). He can however avoid doing the said work if he pays the Mining Recorder the sum of $150.00 per claim. Upon performing work equal to the sum of $750.00, a Certificate of Improvement can be obtained. There is no definite list of the type of work required but the cost of a survey

is equivalent to the sum of $150.00. A lease is granted by the Alberta Act for a period of 21 years and is renewable if the lessee furnishes evidence that he has complied with the conditions of the lease (Sec. 133), but the lessee must pay the sum of $50.00 for the first 21 years and $200.00 for a renewal.

Saskatchewan differs from its neighbours in that a claim can be held for one year and then from year to year without re-recording provided that within 10 years immediately following the recording, he has performed the required work of $1,000.00 consisting of at least $100.00 the first year and in each succeeding year, After having been granted Certificates of Work and a Certificate of Improvement for each year, he may apply for a lease of the claim for a period of 21 years at a rental price of $5.00 per annum with a renewal at the end of the first lease for another period of 21 years at the price of $10.00 per annum. As for the types of work acceptable, a survey is considered as the equivalent of one year's work while boring is counted as work at the rate of $5.00 per foot of boring, and a compressed air drill at work is recorded at the rate of $7.50 per foot.

British Columbia is similar to Ontario and Newfoundland in that if the licensee does all that is required of him by the Act, he can eventually obtain a Crown grant. Before ownership is transferred, the Prospector is on a lease basis and must do work on his claim equivalent to at least $100.00 or pay the Mining Recorder the sum of $100.00 a claim. Very little is said in the British Columbia Act as to the types of work recognized by the Department. To obtain the Crown grant, proof must be

made that assessment work in the amount of $500.00 has been recorded and a survey made and the sum of $25.00 paid as a fee.

New Brunswick obliges the holder of a Prospecting Licence to perform work equal to 25 days of 8 hours each for each claim. The law of that Province is similar in a way to Quebec law as the Prospector, in order to obtain a second Licence called a Mining Licence, must pay the sum of $10.00 for each claim. These licences can be renewed each year upon establishing that the required work has been performed. A lease is eventually granted the Prospector for a period of 20 years for the sum of $10.00 a year for each claim and is renewable up to 80 years, but this lease is only granted when it is established that all the terms of the Licence have been complied with and the Minister has received a report signed by the Mining Inspector that the applicant has operated his mine in a bona fide manner for at least 6 months.

Nova Scotia insists on 80 man days' work for each claim during a licence year. This is considerable compared to the requirements of other Provinces and differs in the type of work acceptable and in the fact that it is the Nova Scotia Minister of Mines who decides what expenditures are acceptable, such as construction of roads (not acceptable in Ontario and Quebec), land surveys, laboratory and chemical work, diamond drill or other drill reports, engineering reports. At least one quarter of the work prescribed for a Licence shall be performed within 3 months of the date of the Licence and the remainder of said work within 11 months of the date of the Licence. However, the time between the 16th day of November and the 15th day of April is not counted in computing the time within which work under a Licence is

required to be performed with the proviso however that the above shall not extend the time for the performance of the second instalment of work (Sec. 34, sub-sec. 5).

A 20 year lease, which is renewable, is available as long as the applicant has worked the area, claim or tract and has complied with the terms and conditions of the Act.

The lease cannot be for more than 16 claims (same as for the Licence) and costs the applicant $20.00 a claim in the case of a veined mineral lease and $50.00 a claim in the case of a bedded mineral lease.

Construction of buildings and mills, expenditures incurred in purchasing and installing the mining and milling equipment, diamond or other drill reports, as well as engineering reports are considered as allowable expenditures in lieu of the 600 lineal feet of development work of its equivalent as insisted on in Sec. 46 of the Nova Scotia Act for each year during the currency of the lease. An unusual exemption is contained in Sec. 46, sub-sec. 3, which allows the lessee not to perform the required work during such time "as the Minister is satisfied that the lessee is aggressively attempting to obtain capital for the development of a mine". During the period of the lease, the lessee, if his lease is for a veined mineral, shall pay a yearly rental of 50¢ an acre and for a bedded mineral, a rental of $30.00 for every square mile included in his lease. There is however a refund remitted to the lessee if the royalty he pays on the minerals mined is greater than

the annual rent he pays.

Both the Provinces of Manitoba and Alberta have incorporated into their Act a section which permits the owners of up to 36 contiguous claims in the case of Manitoba, and up to 9 in the case of Alberta, to perform on one or more of such claims the necessary assessment work required by their respective statutes.

F) Conclusion

After an examination of the laws of this Province and of other Provinces, it is considered that the law of Quebec relating to the Prospector and the staking of claims is in general sound and practical. The Prospector, however, is required to bear an unduly heavy expense in carrying out his important functions. In certain jurisdictions, including many of the United States of America, prospecting is free.

The requirements for keeping claims in good standing is also a heavy burden. In Ontario, a claim can be kept for 5 years (provided 200 days' work is done during that period) and as there is no Development Licence required as in Quebec law, the holder of the claim applies either for a lease or letters patent as the case may be. A valid criticism of the Ontario system, however, is that if letters patent are obtained, the subject land is lost to everyone else whether there are minerals or not in the ground and whether or not the holder decides to work it. The Province also derives no revenue from these lands as such. The Ontario law was undoubtedly motivated by the desire for immediate

government revenues. Consequently, unless the government revokes the letters patent granted, great sections of land are tied up and will probably never be developed. Ontario therefore is now in the same position as Quebec was before 1880. The Eastern Townships in Quebec and the district around Hull, where the land was conceded before 1880, is closed for ever to Prospectors unless they can come to an agreement with the present owners. Ontario recently sent representatives to Quebec to study Quebec law and its advantages, especially relating to those sections which oblige the Prospector to take out a Development Licence on his claim after one year. The important mining district of Porcupine still has large tracts of land which have not been prospected because, generally speaking, in Ontario, Crown grants for other than mining purposes convey the mining rights. In Porcupine as well as in other districts, it has often proved impossible to convince the owner to allow the Prospector to examine the land without prior signature of an agreement which would render the development of the property completely unattractive to the Prospector from a financial viewpoint. Due to the multiplicity of ownership, it is impossible to get all of the owners to agree on a line of action or to get a clear title to the property.

Land grants which include the mineral rights should never be made except for <u>fully operating mines</u> and replaced by leases, the terms of which would require continuous assessment work during the term of the lease, so that if the work is not accomplished, the lease would automatically terminate and others would be given a change to

develop the property to the advantage of the Province. If land grants including mineral rights are still to be made, it should be a condition as it is in Quebec that the mining of the minerals therein contained must commence within a reasonable delay in default of which the grant would be void or voidable.

The Civil Code of the Province of Quebec defines ownership as

> "the right of enjoying and of disposing of things in the most absolute manner, provided that no use be made of them which is prohibited by law or by regulation." (Art. 406 C.C.)

From time immemorial, land has been occupied by the individual so that he might gain from his occupency. He is in full control of his property as long as his actions do not bother or inflict a hardship on his neighbors. The proprietor must not abuse of his right of ownership which is a law of public order.

In mining, the same principle applies, in a different manner, for the owner of a claim who has obtained his land from the Crown, in accordance with the dictates of the law, is in full ownership, but he must abide by the sections of the Mining Act which oblige him to perform certain works on his property. The obligation of the owner of a claim to perform certain works on his property is certainly not contrary to the principles contained in the Civil Code of the Province of Quebec

and to the right of ownership. In not developing his valuable property, the owner of a claim would be abusing his right of ownership to the detriment of his countrymen in general.

In certain countries, the freehold system originally fostered the development of mining but to-day where land has become more and more scarce, the system of leasehold is the most logical system.

Mr. Eugène Coste, in his article on Suggested Improvements to the Mining Laws of Canada (1), declares:

> "The extent to which we thus part with our mineral lands in Ontario, without getting any actual work done towards the development of our mines, is simply enormous, and the evil consequences of this wrong policy on the best mining interests of the Province are really frightful to contemplate. Some may think that we exaggerate, but a few official figures will show that we are only recording the cold unpleasant truth.
>
> In the years from 1897-1902 (inclusive), the reports of the Bureau of Mines of Ontario give, as having been granted by a full purchase or lease during these 6 years, 3,922 locations of a total acreage of 411,190 acres. Now, what is the proportion of that large acreage (taken up in our most newly discovered mining districts) which is actually being worked and productive, even to a small extent? Referring to the last official report of the Bureau of Mines for 1903, we find that just about 100 places or mines were working in the Province in 1902. These workings, with a few exceptions, covered in each case only a few acres, but we will say that in the average 40 acres at each place were being developed, which is certainly a very liberal estimate for the average. We then have 100 x 40, or 4,000 acres, as being under mining work in the whole of the Province in 1902, or not 1 per cent, of what was granted in the last 6 years alone. If we now take into consideration all the mineral lands that were granted in Ontario before 1897, and assume that they amount to another 400,000 acres (which certainly

(1) "Journal of the Canadian Mining Institute", Vol.VII, 1904.

must be a low estimate) we see that only one-half of one per cent of our acquired mineral lands are being developed. If we now consider the well-known fact that the area covered by the good mines in all good and old mining districts is quite a small percentage of the total area of that district -- say 5 per cent to 10 per cent at most -- and if we apply this approximate percentage to the one two-hundredth part of our acquired mineral lands which alone is being worked, we see that the probabilities for the good mines being in the idle and unworked areas are as several thousand is to one. In other words, in the present conditions of Ontario, the mining community of the Provihce actually working the mines in a bona fide manner have less than one chance in several thousands to develop a good mine from lands acquired directly from the Crown, so much of it being locked up that almost all the good mines must be in that idle portion. Idle granted mineral lands are then not only useless but fatal to the development of our mines. Is it to be wondered then, that we have so few good mines in Ontario to-day? The wonder is, on the contrary, that there should be any mining men left willing to risk their money and run the chances against such terribly large odds."

The obvious lesson to be gained from the consideration of cause and effect above summarized may well be of very practical application to the mining concessions in Quebec in which little work has been done by the holders of letters patent following their grants.

The Prospector in Quebec who wishes to keep his claim in good standing is obliged to do 25 days of 8 hours each on each 40 acres thereof each year. This work may consist of rock stripping, trenches, excavations into the rock, diamond drilling, surveying of claims, mining shafts, drifts and cross cuts and other mining work. The Minister may, moreover, accept to such extent and upon such conditions as he may deem expedient, geological work and geophysical prospecting.

I do not think that the requirements are too much for the Prospector. One criticism may be whether the Prospector can do the required work himself without being obliged to bring in expensive equipment or labour to perform his work? Some of the ideas incorporated into the Acts of the other Provinces should certainly be carefully considered when the Quebec Act is again amended. Manitoba's provision as to assessment work is in many ways excellent:

"a) Trenching, shaft sinking and sinking test pits by removing 144 cubic feet of solid rock provided the application is accompanied by a plan showing the distances and directions of such work from the respective corner posts of the claim or

b) Stripping, shaft sinking and sinking test pits in overburden by removing 288 cubic feet provided the application is accompanied by a plan showing the distances and directions of such work from the respective corner posts of the claim."

From an engineering viewpoint, the above proportion of 2 to 1 is normal as it is approximately twice as difficult to work in hard rock as in overburden. The system has the advantages that any Mining Inspector can visually verify if the work is done, while in Quebec law it is extremely difficult to say or prove what one man can do in a day, for often one man can do the same as three and vice versa. 25 days of 8 hours may mean very little or quite a bit, depending on the type of labor and the wages earned. The signed affidavit required by Sec. 79, sub-sec. 4, is only as good as the good faith of the applicant. The advantage of the cubic foot system is that one Prospector can without help perform the required work without great difficulty.

Manitoba has incorporated the cubic foot system into its law, while Quebec, without having this system as a legal requirement, requests such information in answer to a question in the form for "Application for a Development Licence" which has to be deposited by the Prospector with the Department of Mines. It should therefore be incorporated into Quebec law.

The provision in Quebec law which states that one foot of drilling is equivalent to one day's work is very practical as this is much more expensive than the normal type of labour work.

Another provision in Manitoba's laws is that beside the trenching and stripping work which is allowable as assessment work, boring by diamond drilling is acceptable only upon the condition that a geological survey of the claim is submitted. This survey must be conducted by an experienced and fully qualified geologist registered under "The Engineering Profession Act" and performed under recognized geophysical methods. Many experts consider that a geophysical survey is valueless unless preceeded by a geological survey. This provision, although excellent on the surface, would not always be practicable as it often happens that without a survey of any kind being made, the first drill sunk strikes valuable mineral deposits. In some Provinces as well as in Quebec, the amount of work required can be replaced by a cash payment or a rental rate per claim or acre. This tends to put an end to the work that should be performed on every property and allows areas to be "blanketed" for long periods. On the other hand,

is it not equitable that these owners who have spent large sums of money on a property should be entitled to full ownership? A lease, even though for a long period and renewable at the end of the period, can always be revoked by the authorities. Quebec has a very practical provision in its law (sec. 50) where the owner of a Mining Concession is mulcted the sum of 10 cents per acre:

> "All mining-land and underground mining concessions sold in conformity with the provisions of this Act, and which have not been patented on the expiration of the delay of 2 years mentioned in section 49, and those the letters patent whereof have been issued after the 1st of July 1911, shall be subject to an annual tax of 10 cents per acre."

The Minister also has full authority to cancel the sale for non-fulfillment of the conditions.

Alberta at the present does not charge the Prospector for a Prospector's Licence and this Prospector is free to work over any vacant Crown lands as well as lands where the mineral rights have been reserved to the Crown. This is an excellent system for one must always remember that each finding of indications of mineralization is the first essential step in the mining industry. Consequently, the Prospector should be encouraged in every way possible for he is usually a man of slender resources. The financing of his trip to distant lands is a great burden to which should not be added the price of a Mining Certificate which is so insignificant from a government viewpoint in comparison to the great potential contribution to the wealth of the country and each community. The work of the Prospector can only be of assistance to his country. In some countries, in order to encourage the

Prospector, rewards are paid for discoveries. One advantage of a Certificate is to give the Government an idea of how many people are prospecting and who and where they are. British Columbia is to be greatly admired for whether or not they have observed that the profession of prospector is rapidly disappearing, it has encouraged the Prospector by an Act entitled "Prospectors' Grub Stake Act" by which the Prospector receives free training in the discernement of minerals and is given food and supplies up to the value of $300.00 and in some cases up to $500.00. The Province of Saskatchewan also helps the Prospector. It is a known fact that experienced Prospectors are becoming more and more difficult to find throughout Canada, especially in Quebec. Why is it then that they are so rare and yet we hear from all sides that the greatest industry of Quebec within 2 years will be the mining industry. Yet, the people who are expected to bring about great finds should be more encouraged by the Government.

I cannot recommend too strongly necessary amendments to our present law so as to encourage the development of a free prospecting school in Quebec with a grub-stake granted to those who show promise in this more than important profession. The Ecole Polytechnique in Montreal presently gives a course in prospecting which lasts 6 weeks and the fee is $15.00. This period of 6 weeks should be increased to a minimum period of 3 months and should be completely free.

It has been suggested by many that Prospectors be paid a salary by the Government during the months they are in the field. Such payments would be repaid many times by only the finding of one

successful mine. One has but to examine the revenues derived from mining and compare them with the small budget permitted the Mines Department to realize that much more could be done to encourage the Prospector and at the same time increase revenues. In 1937, by the Act 1 Geo.VI, Ch. 44, an amount of $25,000.00 was voted by the Legislature to "aid the youth to profit from the new careers offered by the development of the mining industry". This Act, unfortunately, was never continued beyond 1937 and did not appear in the R.S.Q. 1941.

By the Act 13 Geo.VI, Ch. 56, entitled "An Act to establish laboratories for research in mineralogy and metallurgy", provisions were enacted to help the mining industry generally. Small industries could be supplied with the services of laboratories but no specific mention was made about direct help to the Prospector.

There are many in Quebec who feel however that the present legislation sufficiently encourages the Prospector and that "A Grub Stake Act" would bring the Province into the domain of private enterprise with the resultant abuses. They also logically argue that free government analysis could be given the Prospector's samples. The answer is made that although the maximum credit afforded the holder of 5 claims of 40 acres is $10.00 towards the charge made on him by the Government for studying his samples, thousands of visual examinations are made by the Department free of charge. The practical criticism is that due to the tremendous amount of analysis being done by the Department, a report often takes from 3 to 6 months to reach the Prospector. This might be longer if analyses were completely free.

To those who say that, due to the great scientific advances in geophysical instruments, the Prospector serves only as a staker and is no longer needed, it can be answered that both the Prospector and the new types of instruments complement one another and that both are essential.

Our Mining Act presently reads, with reference to the abandoning of claims,

> "Every holder of a claim may, at any time, abandon his claim upon giving a written notice of the abandonment to the Bureau of Mines".

This clause is far from satisfactory as under this section the same mine can be abandoned many times without any information as to the survey work, drilling, trenching, etc. being turned over to the authorities for the benefit of a new owner or lessee. Before a claim can be abandoned, it should be required, as it is by some Provinces, that a full report be turned over to the local District Government Engineer so that it may be fyled with the Department for future interested parties.

It is also the opinion of the writer that the definition of the word "claim" as contained in our Act and reading as follows:

> "The word claim means the land between the stakes surrounding a discovered mine"

should be amended for the reasons stated previously.

A better definition would bring in the following words:

> "staked out for mining purposes" or "for possible occurrence of valuable minerals"

or the definition contained in Saskatchewan's Act:

> "A plot of ground staked out and acquired under the provisions of this Act"

but certainly not the one in Nova Scotia's Act which states that a claim "means a mining claim" without defining the meaning of "mining claim".

Certain Provinces allow the Prospector a certain number of free assays and some people have wondered why our law is not similar. However, when one examines our section 76, it becomes obvious that for all practical purposes, this section is equivalent to that contained in the said other Provinces.

One criticism of Quebec law is that the maximum number of claims that can be grouped, and then only with the permission of the Minister, is 15. I feel that this criticism is justified and the law should be amended to allow a larger amount of claims to be grouped as in some of the other Provinces. The reason for this is that staking is now being done on a group basis and if the grouping is too small, the concentration which is the "raison d'être" of the grouping will often be to no avail as the important claims which should be worked either extend outside the grouping or are completely outside.

Mining men often bring up the subject that in large unknown areas, as staking is done on a group basis, the staking of 4 posts on every claim is not necessary, the inside posts being of no real importance. The answer to the above would seem to be that the original stakers or owners would not suffer, but any other persons

would find it most difficult as they would never know if they were on open land or staked land, unless they could see the distant outside posts.

As our Mining Act presently stands, it is more than difficult for anyone to follow chronologically, chapter by chapter, the procedure outlined for the obtaining of a Miner's Certificate, the work required to keep a claim, the staking of same, and the work required when a claim is under development. We find the chapters on Mining Concessions and the Acquisition of Mining Lands as well as their cancellation at the beginning of the Act when they should be at the end. The chapter on Development Licences contains clauses pertaining to the work required for a mining claim. As soon as the Act is again revised, there should be a logical order given to the chapters and sections, starting with the chapter on Miner's Certificate, Staking out of Claims, and then the chapters on Development Licences, Assessment Work, Mining Concessions, etc.

CHAPTER III

TYPES OF MINING RIGHTS

SECTION 2 - DEVELOPMENT LICENCES.

A) Types of Development Licences.

In Quebec, the holder of a Miner's Certificate, who has staked a claim or claims, is entitled to hold same for a period of 12 months from the date stated on the stakes or for a period of 24 months when the claim or claims are situated at a distance of 100 miles or over from a railway. Before the 12 or 24 months have come to an end or not later than 10 clear days after the expiry thereof, the holder is obliged by law to apply for a Development Licence. Such an application would not be made if the holder felt that his claim was not worthy of further development.

A Development Licence is issued to the applicant upon the following conditions being satisfied:

a) Payment of a fee of $10.00;

b) Payment of an annual rental of 50¢ per acre;

c) Description of the staked ground;

d) Fyling of an affidavit establishing that the work required has been completed.

There are two kinds of Development Licences:

1) Private Lands' Development Licence, where the mining rights belong to the Crown, and

2) Public Lands' Development Licence.

Unless a person has obtained one of the above licences, he cannot mine upon public or private lands (where the mining rights belong to the Crown). This Licence is valid for the following period and under the following conditions (Sec. 79, sub-sec. 2 of the Quebec Mining Act as amended):

> "Such licence shall be valid for one year from the date of its issue, and shall be transferable only with the consent of the Minister. If it has been issued in error it may, within the next sixty days, be cancelled by the Minister or by the Mining Commissioner at the request of the Minister or of any other interested party. If it has been issued through fraud or false representations, it may, at any time, be cancelled by the Minister, or by the Mining Commissioner, at the request of the Minister or of any other interested party, provided, however, that the licence be not in the possession of a third holder in good faith, under a transfer registered within the past five years in conformity with section 34 of this Act. When the cancellation has been effected by the Minister, any interested party may appeal to the Superior Court within thirty days from the decision, by means of a mere petition served upon the Minister and upon the other interested parties. The judgment on such petition shall be final and without appeal."

As in the case of claims, the Development Licence is granted for areas of certain size as provided by Sec. 79 (3) of the Act and cannot exceed 200 acres. In surveyed territories where lots are less than 120 acres, the said Licence must be for more than half the lot, and in the case of lots of over 120 acres, the grant cannot be for less than a quarter of the lot. In unsurveyed territory, the area must be at least 40 acres and of a width of not less than 20 chains.

The reason for these stipulations as in the case of the size of claims is that the legislators felt, and logically so, that very small claims or development areas would only complicate the working and protection of same.

B) Performance of Required Work

The development and prospecting work demanded yearly is the same as for a claim, e.g. 25 days of 8 hours each on each 40 acres or portion of 40 acres having an area of 20 acres or more and 12 days of 8 hours each on each portion of 40 acres having an area of less than 20 acres.

The holder of a Development Licence who desires to renew his Licence may do so before it expires or within 25 days after its expiration date but in this case an affidavit must be fyled giving the reasons for the lateness of his application. If the Licence has expired, he must also state that all the work required for the preceding year has been performed and accompany his affidavit with a sum equivalent to the fee of $10.00 and a rental of $1.00 per acre.

As for the types of development work allowed, one day's work shall be allowed for each foot bored with a diamond drill. A certified copy of the daily register of each boring must be deposited with the Department of Mines. The establishing by survey of the outside lines of a group of claims shall be equal to a maximum of 6 days of 8 hours each for each claim so surveyed. As for the other types of work allowed, sec. 80 reads as follows:

> "The prospecting and development work, contemplated under sections 75 and 79 shall consist of rock stripping, trenches, excavations into the rock, diamond drilling, surveying of claims, mining shafts, drifts and cross cuts and other mining work. The Minister may, moreover, accept, to such extent and upon such conditions as he may deem expedient, geological work and geophysical prospecting.

> The work required for erecting buildings, constructing or repairing roads and other similar improvement work shall not constitute work as contemplated in the said sections 75 and 79."

An excellent provision contained in sec. 79, par. 7, of the Act, allows all the work, necessary for the obtaining of a renewal of a Development Licence, to be performed on the lands covered by a Mining Concession in the case of adjacent lands which are partly under Mining Concession and partly under Development Licence when they are in the name of the same person, firm or company and may be considered as one and the same enterprise. The Minister may, also, for good and sufficient reason, allow the holder of a claim or of a Development Licence an additional delay of not more than 3 months to perform the work required by law. The Lieutenant-Governor in Council has also authority from 1939 to 1954 to reduce the rent per acre to 25¢ for the issuing or the renewal of a Development Licence as long as the necessary work has been performed. The explanation why the Lieutenant-Governor in Council was granted power to reduce the annual rent to 25¢ per acre during a 15-year period from the 1st of July 1939 was that the original order in council previous to 1939 had never been continued and consequently the reduction to 25¢ per acre during the non-continuation of the order was illegal. This is why the following clause was inserted so as to provide for this illegality. The last paragraph of sec. 79 states:

> "The fact of having claimed a rental of only 25¢ per acre for the issue or renewal of Development Licences, between the first of July 1943 and the date of the coming into force of this Act, shall not be a cause of invalidation of these licences." (11 Geo.VI, ch. 57).

The above extension of 15 years was in virtue of the Act 5 Geo.VI, Ch. 35, and continued the first extension of 2 years of 3 Geo.VI, Ch. 51.

The holder of a group of claims that are contiguous and do not exceed 5 in number may concentrate the development work on any one of the claims. This provision may be extended by the Minister to a maximum of 15 contiguous claims as long as the work to be concentrated is diamond drilling or underground working. As discussed in the chapter on Prospectors, the grouping of a maximum of 15 claims seems quite small and it might be advisable, as in the case of certain other provinces, to allow a greater number to be grouped. Because of the disappearance of placer mining and of the fact that many mining operations are being carried out in vast territories, staking is generally done on a group basis and too small a group can affect those claims that are considered valuable either by excluding them if the group is too small or by including only a portion of them in the allowed grouping. The grouping of claims so as to allow the development work to be performed on any one of the claims in the group was first introduced in our law by the Act 14 Geo.V, Ch. 31, Sec. 11 and provided that the holder of a group of not more than five contiguous claims shall be entitled to concentrate the development work on any one of the claims in the group.

Sec. 11 was further enlarged by an amendment to the Act in 1934 (24 Geo.V, Ch. 29, Sec. 6) which allowed the Minister to extend its provisions to a larger group of claims if diamond drilling or

underground working was contemplated. By the Act 1 Geo.VI, Ch. 41, Sec. 41, it was again amended so as to include up to but not exceeding 15 claims and an addition was made to the first paragraph, so that it now reads:

> "The holder of a group of not more than five contiguous claims shall be entitled to concentrate the development work on any one of the claims in the group, and the report of the work must specify the number of each claim on which such work was one." (Sec. 82)

During the war years, every holder of a claim or of a Development Licence was exempted from performing the work required upon the claim (6 Geo.VI, Ch. 54). This provision was extended to cover Development Licences issued after the first of April 1942 until the expiration of a period of one year from the end of the war.

Sections 85 and 86 of our present law covers those lands which contain natural gas, salt, coal, mineral oil or naphta or iron sands, which may be staked and placed under an ordinary licence or for a long term upon complying with the following conditions:

"1. No staking or licence shall cover more than 1280 acres;
2. In surveyed territory the area staked out or covered by a licence shall consist of whole lots or regular fractions of lots; in unsurveyed territory, such area shall form a rectangle, but, in either case, the width of the claim shall not be less than one-half its length;
3. The holder of a Miner's Certificate who wishes to obtain an ordinary licence, must:
   a) have staked out and produced an accurate description and a regular survey plan of the ground applied for;
   b) establish, by an affidavit, that, since the staking out of the ground, work has been done thereon for a value equal to one dollar an acre, for each acre under licence;
   c) pay the sum of ten dollars, as a fee, and an annual rental of ten cents per acre;

4. Such licence shall be valid for one year only, and shall be renewable once only on the same conditions;
5. At the expiration of the renewal or of the original licence, on proof of the discovery of combustible gas or of naphta or of iron sands in appreciable quantity, the holder must provide himself with a special or long-term licence covering a period of ten years, at an annual rental of twenty-five cents per acre, payable in advance; this latter licence shall be renewable by ten-year periods as long as the mining lasts, and upon payment, at the beginning of each year, of the same rental of twenty-five cents per acre."
(R.S. 1925, Ch. 80, Sec. 66; 1 Geo.VI, Ch. 41, Sec. 43; 3 Geo.VI, Ch. 51, Sec. 15).

The article was written originally for oil and gas and then extended to include other materials. The licence as stated in the law is for only one year. Because of the diversified expenses involved, $1.00 per acre was charged (Sec. 87) instead of a day's work basis being used.

As for the staking of the lands containing combustible natural gas, salt, coal, mineral oil or naphta or iron sands, the method used is the same as in the case of normal staking in unsurveyed and surveyed lands, with the exception that the direction given the said lines shall be optional and that the staking shall be done with a view to prospecting for gas and petroleum or iron sands.

To renew an ordinary licence or to obtain a long-term licence, the holder must establish by affidavit, that work equivalent to $1.00 per acre for every acre under licence has been done, and if the holder of a long-term licence ceases to bore or mine his property, the licence may be cancelled upon a notice of 3 months being given.

On private lands, the holder of a Development Licence or the owner of Mining Rights may do development work with the permission

of the owner of the land and if the owner of the land refuses, the development work can be proceeded with upon performing the formalities stated in the Act as follows: A notice in writing is sent to the owner of the surface stating that the applicant intends to do development work on his land and that the applicant is ready to pay the damages to his property. The damages to be established by mutual agreement. If the owner refuses to come to an agreement with the applicant, an arbitrator is appointed by the petitioner and a notice sent to the owner asking him to apoint a second arbitrator who will act on his behalf. Ten days after the service of the notice, if the owner has not accepted the petitioner's offer in settlement of the damages, or has not named an arbitrator to represent his interests, the Inspector of the Mining Division, upon application by the petitioner, shall appoint an arbitrator whose decision shall be final and without appeal. On the other hand, if the owner names an arbitrator, the 2 arbitrators then named appoint a third and the 3 arbitrators then decide upon the amount of the compensation. If the 2 arbitrators cannot decide on the choice of a third arbitrator, the Mining Inspector shall appoint him. The costs of such arbitration shall be paid by the petitioner, except the costs of the arbitrator appointed by the adverse party which shall be paid by him.

If the sole arbitrator should die before rendering his judgment or refuses or neglects to act, the Inspector shall appoint a competent person to replace him.

It would seem essential that a faster method be adopted to settle disputes, so that the immediate development of the property would be facilitated. Valuable properties are often tied up for months at a time before the third arbitrator is appointed under the Act. The fundamental reason for an arbitration is that the sum offered by the petitioner is not considered as sufficient compensation by the owner. This problem could be solved by a Board appointed under the Act which would demand that a reasonable sum be deposited forthwith by the petitioner so as to permit him to go ahead with the development of the property, leaving to a later date, when the parties are properly represented, the decision as to what compensation should be awarded by the Board. Alberta has a "Right of Entry Arbitration Act" which facilitates the immediate development of the property.

To permit the authorities to have full possession of the pertinent information about the development work, the holder of the licence is obliged to submit an annual report containing the quantity of mineral extracted, its value, the quantity and value of the marketable product, the number of workmen, the amount of wages and salaries paid, the number of persons killed or injured as well as their names and all other information that the Minister may require of him. The licensee must also fyle a statement of the work performed and of the minerals mined during the period of the licence.

The owner of a Development Licence as in the case of the owner of a Mining Concession or the holder of a claim, may, with the

consent of the Minister, sell, assign, convey or alienate his rights as licensee. A copy of the deed must be sent to the Minister who shall register same upon payment of a fee of $10.00.

At all times on lands under mining claim or under Development Licence, the Lieutenant-Governor in Council has full authority to establish on Crown lands all types of works necessary to facilitate the operating of the mines including the construction of villages and towns, of grounds to receive rubbish, liquid or solid tailings and residues from operations, of sites for mills and workshops.

As stated previously, the present law on Development Licences includes 2 types:

1) Private Lands' Development Licence, where the mining rights belong to the crown, and
2) Public Lands' Development Licence.

The above section covers all types of minerals but this was not always so. The first statute in 1880 under the heading of "Mining Licences in General" spoke only of licences for mining gold or silver (Sec. 5043, 44 Vict., Ch. 12):

1) Private Lands' gold or silver licence;
2) Public Lands' gold or silver licence.

This situation arose from the fact that at the time the main interest of the legislators centered around gold and silver and although reference was often made in the act to the "baser metals", no mention was made of them when the section on mining licences was drafted.

By virtue of an amendment in 1884 to the original statute (47 Vict., Ch. 22, Sec. 8), a third type of licence called a "Licence for the Working of Mining Locations" was introduced, thereby bringing into the law for the first time the idea of a Mining Licence for Minerals other than gold or silver.

In 1890, by the Act 54 Vict., another change was brought about and upon the payment of the sum of $5.00 for every 50 acres upon private lands or the sum of $10.00 for every 50 acres if the mine was upon Crown lands, a permit to explore and to mine was granted. Section 1406 contained the following provisions:

> "Any person, firm or company may obtain from the Commissioner an exploration permit with a right to make all necessary works, to establish the mining value of any land."

This right to explore and to mine was completely different from the right to mine granted to the holder of a Mining Licence in 1880.

Originally, the Mining Licence entitled the owner to prospect and do development work as well as mine. With the amendments, the holder of mining properties was obliged to apply for a Mining Concession before he could mine. By the Act 1 Geo.V, Ch. 41, Sec. 34, the word development replaced the word mining where pertinent throughout the Act.

This amendment however did not qualify the difference between development work and actual mining operations so to this day there is still a confusion as to what work is considered as development work and what is considered as mining work. Sec. 80 of our Act, without defining the meaning of prospecting and development, lists types of works that are considered as prospecting and development work.

Sections 31 and 80 of our present Act differ and should be amended so as to be in accord. Sec. 31 refers only to prospecting work while Sec. 80 refers to prospecting and development work. It is obvious that these 2 sections mean one and the same thing and therefore should read that way.

McDougall, in his Quebec Mining Law, page 46, points out another irregularity which should be amended. Sec. 31 declares that lands containing mines may be "worked", while the word "mining" is used in Sec. 80 and he goes on to state:

> "No doubt the working of mining lands is mining but in view of the difficulty with which one is faced in determining when development ceases and mining begins, the expressions used in the sections under discussion only add to the confusion."

The Statute of 1892, 55-56 Vict., Ch. 20, enacted 3 important articles which served as the basis to our present sections 31, 77 and 78:

> "Sec. 1440 - All lands supposed to contain mines or ores belonging to the Crown, may be acquired from the Commissioner of Crown lands:
> 1) as a mining concession by purchase, or
> 2) be occupied and worked under a mining licence."

> "Sec. 1458 - Every person is prohibited, under pain of the fines and penalties mentioned in article 1526, from mining in any mine, either upon public or private lands, when the mining rights belong to the Crown, without having previously purchased the same, in virtue of the present law, or without having obtained, to that effet, a mining licence and paid the fee and rent required by article 1461."

> "Sec. 1460 - There are two descriptions of licences for mining known as follows, to wit:
> 1) Private Lands' licence, where the mining rights belong to the Crown; and
> 2) Public Lands' licence."

At this time, the fee for a "Mining Licence" was $5.00 while to-day it is $10.00 but the annual rent in 1892 was $1.00 as compared to the present rental of 50¢ an acre. A Mining Licence in 1892 could not be granted for more than 200 acres. By R.S.Q., 1909, Sec. 2134, such a licence in unsurveyed territory could not be granted for less than 40 acres.

By an amendment to the Act in 1911 (Sec. 7), the following clause was introduced:

> "In case of claims or lands situated more than 50 miles from a railroad station, the Minister may in his discretion, substitute a further annual rent of fifty cents in place of the work required to be done."

This clause still exists.

The requirements relating to work were introduced by the 1911 amendment (Sec. 2134, sub-sec. 4), which obliged the licensee to do prospecting or development work equivalent to 25 days of 8 hours each on each 40 acres or portion of 40 acres. This is still law with the addition "that 12 days' work was all that was required on lots having in area less than 20 acres." This further amendment was introduced by the Act 14 Geo.V, Ch. 31, Sec. 3.

The provisions allowing certain credits for work done being applicable to work required, which is incorporated in the present Sec. 79, was originally enacted by the Act 4 Geo.V, 1914, Ch. 20:

> "If in support of an application for a mining licence, either for the first time or by way of renewal, the applicant produces a solemn declaration to the effect that in the course of the preceeding year he has done more work than required by law, the Minister may allow such excess to apply on the subsequent renewal."

An extension of time to perform the work was also enacted by the above Act and has remained with us to this day:

> "The Minister may exercise the same discretion whenever the holder of a claim or of a licence is the only person to apply for the issue or the renewal thereof or if the reasons offered by such holder for his failure to do the work required are deemed good and sufficient."

This is an excellent provision because it takes care of the licensee's sickness or of circumstances beyond his control and is stronger than the provisions of some of the other Provinces which consider only sickness as an excuse.

The limit of territory was amended by the Act 7 Geo.V, Ch. 25, Sec. 3, so as to include after the number of acres allowed, the following:

> "and is a surveyed territory for less than half a lot as the north half, the south half, the east half, or the west half as the case may be."

Our legislators, realizing the difficulties of distance and the short season, introduced a new section in the Act for "New Quebec" (9 Geo.V, Ch. 31):

> "The Lieutenant-Governor in Council may, if he sees fit, fix the duration and scope of mining licences for that part of the Province known as "New Quebec" as well as the terms on which they will be issued and renewed."

With the passing of years, surveying and diamond drilling were considered as actual work:

> "The work necessitated for the surveying of a claim, before or after the issue of the licence to operate, shall be accepted as development work, but only to the extent of twenty-five days of eight hours. And in the case of boring with a diamond drill, two days' work shall be allowed for each foot bored into the rock." (14 Geo.V, Ch. 31, Sec.10).

The present law is now one day's work for each foot bored and the term "development licence" is used instead of "licence to operate".

It was with the issuance of the R.S.Q., 1925, Ch. 80, that some semblance of order was established in those sections of the Mining Act which pertain to Mining Licences (as they were called then), development work, grouping of claims, etc.

The chapter on Development Licences is much less difficult to follow than some of the other chapters either before or after the chapter on Development Licences. Many of the sections contained in the above chapter have been discussed at length in the Prospectors' chapter, such as the work required to be performed to keep one's claim or one's Development Licence.

There are, however, certain conditions that differ. An analysis ticket is granted to the holder of a Miner's Certificate who stakes out a claim of 20 acres and records same; the said ticket is accepted by the Department of Mines as being worth $1.00 in reduction of the cost of his assay. For the holder of a Development Licence, the situation is different. He must pay a fee of $10.00 for the licence plus an annual rental of 50¢ per acre every year for which he is entitled to one analysis ticket for every $5.00 paid to the Department in satisfaction of his licence and lease.

The above provision was first enacted in 1937 by the Act 1 Geo.VI, Ch. 41, Sec. 35.

There are 2 kinds of Development Licences. The Public Lands' Development Licence is granted where both the surface and the Mining Rights belong to the Crown and its operation is a relatively simple matter, but the Private Lands' Development Licence is granted where the surface is owned by an individual or a company and the Mining Rights, or some of them, belong to the Crown. The operating of the latter licence gives rise to much inconvenience and delay for where the owner of the surface is willing to co-operate and allow the holder of the Development Licence to explore, trench, excavate, strip, etc. on his property, there is no difficulty but where the surface owner refuses, or demands an exorbitant amount in settlement of the damages that might be caused by such work, the long expensive procedure established for arbitration and the necessity of postponing work until the arbitration is made, are such as to jeopardize the success of many ventures.

The surface owner in accordance with his rights must, however, be approached by the holder of the Development Licence who has the Mining Rights. He cannot refuse to do business because the law will oblige him to come to some understanding with the surface owner.

An important point is that after the Prospector has held his claim under his Miner's Certificate for a period of one year or 2 years, he advances to the development portion of his work and is obliged to obtain a Development Licence. As he is forbidden to <u>actually mine</u> without having purchased the land as a Mining Concession with the exception

of where the law has authorized him to ship during a year up to 300 tons of ore outside the Province (Sec. 31). With this permission, he is allowed to have his ore treated at proper plants so as to verify the contents of his claim or claims. The complete contradiction of our law in certain sections is evidenced by Sec. 77 which declares that you can't mine upon public or private lands when the Mining Rights belong to the Crown unless you have purchased such lands and that you can't prospect and develop unless you have a Development Licence, while Sec. 58 of the Act allows the holder of a Miner's Certificate to do prospecting work which is contrary to Sec. 77. Sec. 58 therefore should be amended to include development work which is obviously the intent of the section. Sections 77 and 58 should also be correlated so as not to be contradictory. It is therefore essential that the definitions of Mining Claims, Miner's Certificate, Development Licences be amended so as to give each definition its powers and thereby stop all confusion not only as to the above but also as to where and when development work stops and where mining work starts. In practice, the Department now considers certain development work as mining work.

CHAPTER III

TYPES OF MINING RIGHTS

SECTION 3 - MINING CONCESSIONS

A) Generally

In Quebec, no one may prospect and develop on Crown lands without having a Development Licence or being the holder of a claim, and no one may "mine" on mining lands belonging to the Crown without having acquired the land as a Mining Concession by purchase. The situation would naturally be different where the mining rights were owned by the surface owner. As stated in the previous chapter, originally one could mine as long as one has a "Mining Licence".

When the holder of a mining claim or the holder of a Development Licence, by reason of the work done upon the property, considers that his land contains valuable minerals, an application is made to the Department to purchase the land, in the case of Crown lands, as a "Mining Concession" or as an "Underground Mining Concession" when the surface does not belong to the Crown.

It is difficult to decide where development work termintes and mining begins. The Act does not specify. However, from a practical viewpoint, any operation which brings the ore to the surface can be considered as mining.

Upon applying for a Mining Concession, the applicant must pay to the Bureau of Mines the price in full, at the rate of $15.00 per acre for superior metals and $9.00 per acre for inferior metals. By an amendment to the Act in 1909 (9 Ed.VII, Ch. 27, Sec. 5), the size

of a Mining Concession was reduced from 400 acres to 200. For a few years, in virtue of 54 Vict., Ch. 20, a Mining Concession had to be of a minimum area of 50 acres and of 100 acres at the most.

The first Act in 1880 charged a much smaller price. For the sum of $1.00 an acre in the case of baser metals and $2.00 in the case of gold, silver or phosphate mines (Sec. 29), the applicant could purchase up to 400 acres. By the Act. 54 Vict., 1890, Sec. 1463, the price of sale was increased to $2.00 an acre in the case of iron and ochre and to $5.00 an acre for all other minerals.

By various Acts passed since 1880, the Lieutenant-Governor in Council was authorized to fix the price of Mining Concessions in certain districts. One of these Acts was the Act 6, Geo.V, 1916, Ch. 19, in which it was declared that for a period of two years the Lieutenant-Governor in Council may

> "on account of the distance and the difficulties resulting from the short seasons, fix, for that part of the Gulf St.Lawrence from the river Goynish towards the east, the price of mining concessions containing ferriferous sand, and have entered in the purchase price, for the past as well as for the future, the proportion already paid by the person acquiring the same as annual payment for a Mining Licence upon the same land."

Sec. 42 of the Act allows the Minister to put up for sale any number of Mining Concessions as he deems proper and this sale may be effected by public auction after a notice has been published in the Quebec Official Gazette in three consecutive issues, and at least once a week during three weeks in one French and one English newspaper in

each of the Cities of Quebec and Montreal. A sale of an old Mining Concession took place in the district of Preissac recently, which was originally called the Height of Land concession. This section seems to allow the Crown to organize Mining Concessions throughout the Province of Quebec and then sell them at auction. The sale price, however, must be at least $15.00 an acre for superior metals (55-56 Vict., 1892, Ch. 20, Sec. 1445). However, no Mining Concession larger than 200 acres can be sold by the Crown in the same year to any one person within a radius of 100 miles except that the Lieutenant-Governor in Council may, under certain circumstances, allow the sale of a Mining Concession which does not exceed 1,000 acres.

With regard to any defects which may exist in the title of those who have acquired mining lands as a Mining Concession, the ownership thereof shall be prescribed by a public and peaceful possession during a period of 10 years, except for the rights of the Crown.

An essential condition to the sale of all Mining Concessions is that contained in Sec; 45 of our Act:

> "In townships duly erected, as well as in unsurveyed territory, no land shall be sold under this Act, unless there be some real indication of the presence of minerals as established to the Minister's satisfaction by the exhibition of specimens found upon or in such land, accompanied by affidavits of competent and credible persons, establishing that the specimens exhibited came therefrom. Nevertheless, if superior metals be in question, the applicant must furnish, in addition, a certified report from a qualified engineer, describing the nature and extent of the mineralization." R.S. 1925, Ch. 80, Sec. 37; 19 Geo.V, Ch. 26, Sec. 2; 1 Geo.VI, Ch. 41, Sec. 15.

A Mining Concession can be obtained at any time in the stages of Miner's Certificate or Development Licence as long as the requirements of the Act are satisfied.

In the Act 43-44 Vict. 1880, Ch. 12, a Mining Location was defined as "any tract of country sold for the purpose of mining for ores". This definition is, after the substitution of "country" for "land", identical to the present definition of Mining Concession. It was with the Act 54 Vict., 1890, Ch. 15, that the term Mining Location was replaced by Mining Concession. By the Act of 1880, persons who had obtained land on which the Mining Rights had been reserved in favor of the Crown for agricultural purposes were allowed to mine the land by paying in cash an amount equal to $2.00 per acre if for gold and silver, and $1.00 per acre if for copper, iron, lead or other baser metal. The individual who, on the other hand, had purchased land for agricultural purposes by letters patent but on which the Mining Rights had not been reserved in favor of the Crown could, upon paying the sum of $2.00 an acre, work the same without taking out a Licence. As at the time of the 1880 Act, seigniories covered large sections of land and the "censitaire" could obtain the Mining Rights in the seigniory in which the Crown still held Mining Rights by paying the sum of $1.50 an acre. There were also provisions in the said Act for mining for "baser metals" on lands granted purely for agricultural purposes as well as for lands conceded since 1878, and for mining of gold and silver in seigniories. Our present section 31 then read:

> "All lands supposed to contain mines or ores in the provinces may be acquired from the Commissioner of Crown lands by sale and patents of mining locations"

and was further amended in 1892 (55-56 Vict., Ch. 20, Sec. 1440) to read:

> "All lands supposed to contain minerals or ores, belonging to the Crown may be acquired from the Commissioner of Crown lands as a Mining Concession by purchase."

The area of Mining Locations in 1880 was restricted to 400 acres per person with the Lieutenant-Governor in Council having power to increase the extent of territory to 800 acres. By the Act 47, Vict. 1884, the Lieutenant-Governor in Council was granted the power to determine the form and extent of underground mining locations and by a further amendment in 1892 (55-56 Vict., Ch. 20), the 800 acre limit was increased to 1,000 acres. While our present law divides the Mining Concessions into two classifications, depending upon whether they are located in unsubdivided territory or in surveyed and subdivided territory, the Act at that time divided mining locations, with the allowance of 5% for highways, into three classes of 400, 200 and 100 acres in unsurveyed territories and into one, two and four lots in surveyed townships. As to-day, the applicant was obliged in unsurveyed territory to have his mining location surveyed by a Provincial Land Surveyor so as to permit the Department to have a plan of all mining locations sold. The Surveyor starts his survey at the northeast corner and from there goes to the southeast corner, the southwest corner, northwest corner and back to the northeast corner. He must also indicate the outside lines

by blazing the neighbouring trees on three sides, and plant an iron post at each of the four corners of the claim which shall bear the number of such claim marked in a permanent manner; he shall also place close by the iron stake a wooden stake four inches square bearing the same information as on the iron stake.

McDougall, Quebec Mining Law, page 31, states:

> "Until the enactment of Sec. 31b in 1936, the question of whether a grant of Mining Concession in Crown lands included the surface rights was one much debated though the better view appears to be that it did".

Section 31b, at that time, read as follows:

> "The surface rights of the lands for which concessions have been obtained shall be deemed to have always belonged to the Crown, if the Lieutenant-Governor in Council so decides in the public interest." (1 Ed.VIII (2nd session), Ch. 21, Sec. 1)

However, Sec. 1 of 47 Vict., 1884, Ch. 22, provided:

> "As respects the Crown, such mining rights, so tacitly reserved, shall be property separate from the soil covering such mines and minerals comprised in such rights, and shall constitute a property under the soil of which shall also be public property, independent from that of the soil which is above it, unless the proprietor of the soil has acquired it from the Crown as a Mining Location or otherwise, in which case both the soil and the property under the soil form but one and the same private property."

This provisions was however not included in the R.S.Q., 1909, as such (Sec. 2101).

Sec. 36 of the present Act, however, gives the Lieutenant-Governor in Council considerable latitude in that the surface rights of the lands for which concessions have been obtained shall be considered as always having belonged to the Crown, if the Lieutenant-Governor in Council so decides.

B) The Leasing of Mining Concessions

By an amendment to the 1880 Act in 1884 (47 Vict., Ch. 22, Sec. 3), the Mining Rights belonging to the Crown could be acquired by sale or lease. The only reference to acquiring Mining Rights by lease in our present Act is in Sec. 228 which allows the Lieutenant-Governor in Council, on the recommendation of the Minister of Mines, to grant a lease for the mining of all minerals in New Quebec, but nowhere else. The above section was in recognition of the large expanse of land in New Quebec that could be developed to the advantage of the Province (Ch. 54, 9 Geo.VI, 1945).

It is unfortunate that Mining Concessions cannot be leased to companies otherwise than in New Quebec as the term of a lease can be so arranged as to be conditional upon assessment work being done on the property during the whole term of the lease. Art. 228 as presently drafted excludes the individual completely and although the exclusion might be due to an error, it is doubtful. This section should be amended so as to allow the individual miner a chance to explore this vast region. The reason why mineral exploration licences and leases are granted in New Quebec and not Mining Concessions is that the Quebec Government is favouring the use of leases and exploration licences in new regions rather than granting full ownership.

Timber limits and power sites are leased generally rather than granted outright. The principle of Mining Concessions in Quebec may also gradually disappear. In Ontario, there is a contrary development

for Mining Concessions are being considered as the best solution in districts where the individual miner cannot work alone successfully.

If the work is not done, the lease automatically ends and another person or company may be granted a lease to develop the same territory.

However, the conditions of sale in the Quebec Act are severe enough to permit the Province to cancel a Mining Concession if the mining of minerals is not commenced within two years from the date of purchase as a Mining Concession.

The first definition of "underground mining location" (47 Vict. Ch. 22, Sec. 3) contained the principle that an underground mining location could be leased:

> "Every property under the soil, so sold or ceded by lease or otherwise, shall be designated under the name of underground mining location."

The definition contained in the Present Act reads as follows:

> "The words "underground mining concession" mean any underground mining property sold for the purpose of mining under this Act."

The above definition, with a very slight change, is the repetition of the one contained in 55-56 Vict., Ch. 20, 1892. The mining rights which belong to the Crown in the lands of private individuals are acquired and worked in the same way as in those lands which belong to the Crown.

Sec. 1446 of the Act 55-56 Vict., 1892, Ch. 20, is our present Section 43 and permits the owner of a Mining Concession for superior

metals to mine for all metals which may be found on the property including inferior metals, unless otherwise stipulated. However, the right to mine for superior metals does not apply to the owner of a concession for the mining of inferior metals.

The "theory of discovery" which was an essential part of ancient law and is still recognized by many countries is implied in our law under Sec. 45 which declares that in townships as well as in unsurveyed territory, no land shall be sold under the Act unless proof is given the Minister that the specimens found upon that property indicate the presence of minerals. In the case of superior metals, the applicant must not only furnish affidavits that the specimens came from that property but a qualified engineer's report describing the find must be fyled. This principle was first introduced into our law by the 43-44 Vict., Ch. 12, 1880, and further developed by 54 Vict., Ch. 15, 1890, Sec. 1485.

As stated in the chapter on Prospectors, sales of mining lands in many of the other provinces (Sec. 49, par.4) are not conditional upon mining operations being started within a reasonable delay. Consequently, unless the lands containing minerals are developed by the purchasers, the only result will be that great sections of land will have been granted without serious work being done on them. A minimum annual requirement of work on the property might well be made a condition of sale, for due to the varying economic conditions, what is a profitable mining operation one year might, due to the decrease in mineral prices,

be a non-profitable operation the next. Consequently, often mines have to be closed down with resultant heavy expenses until conditions improve. Fully operating mines should, however, have full ownership of their lands, as such mines, being in production, it is to the advantage of the owners as well as to the Government's to keep them in production. As in the case of any other present business enterprise, ownership is essential.

In this Province, mining lands are sold on the express condition that the purchaser shall commence the mining of the minerals within a period of two years from the date of purchase and that before the end of the two-year period, he shall spend in working for every section or lot of 100 acres a sum of not less than $1,000.00 in the case of superior metals, and a sum of not less than $500.00 in the case of inferior metals. The Minister has, however, jurisdiction to extend the above delays. In the case of adjoining lands being sold separately but to the same person, firm or company, he can permit the work to be concentrated on any one of the said lands.

The question as to whether the condition is suspensive or resolutive is an interesting one. The writer, for one, is of the opinion that it is resolutive as the purchaser enjoys full ownership during his two years and has up to the last day to fulfill the conditions necessary to satisfy the vendor.

McDougall, Quebec Mining Act, at page 32, states the following:

"The solution of this question if of paramount importance in cases where the grantee wishes to charge the land to secure an issue of bonds or debentures. If the condition is suspensive, he has no real right in the property which can be hypothecated or mortgaged until letters patent are issued. The terms of a Mining Concession, according to the form which has been in use for many years, would be inconsistent with the condition being suspensive. The answer to the question is probably found by implication in sections 41 and 42 (presently our sections 49 and 50). The former provides that the Minister may cancel the sale of such mining lands in default of the "performance" of the conditions and the latter in dealing with the cancellation by reason of failure to pay the annual tax of 10 cents per acre payable in respect of lands held under Concession and Patent, provides that the "mining rights which thus revert to the Crown" may only be again staked in pursuance of an order-in-council... there would appear to be little, if any, doubt that the condition on which mining lands are sold is resolutive and not suspensive."

The Government derives a tax of 10 cents an acre on such mining lands and underground Mining Concessions which have not been patented at the end of the stipulated two-year period as well as on those mining lands the letters patent whereof were issued after the 1st of July, 1911. The said tax can, however, be remitted the owner upon proof being made that at least $200.00 have been spent in mining work upon the property during the year. The cancellation of the sale of mining lands was introduced by the Act 1890, 54 Vict., Ch. 15, Sec. 1476, and referred to the annulment of the sale in default of the payment of the royalty, or if the owner ceased to work on his concession for a period of two years. This 1890 Act did not qualify the amount of work to be performed. By an 1892 amendment (55-56 Vict., Ch. 20, Sec. 1451), the amount of work required was to be equivalent to the sum of $500.00 in the case of superior metals and $200.00 in the case of inferior

metals. However, this amount of work could be spread over the whole property. Our present law states that the amount of work required must be for every hundred acres.

An unusual provision which is no longer in the law is found in 24 Geo.V, 1934, Ch. 29, and allowed the owner of a Mining Concession who had devoted the whole or part of his land to building purposes to dispose of same after having the transfer approved by the Minister and upon paying an additional sum equivalent to $25.00 for each lot not over 5,000 square feet in area. The above section was amended by the Act 1 Ed.VIII, 1936, Ch. 21, Sec. 31, which declared that the owner of a Mining Concession cannot devote the whole or part of his land to purposes other than those of mining. He was however allowed, upon authorization of the Minister of Mines and the Minister of Municipal Affairs, Trade and Commerce, acting in concert, to subdivide the whole or part of his land into building lots. Without the said authorization, he could not dispose of any portion of his land, nor erect nor permit the erection on his land of constructions other than those needed for his operations. Any infringement of the above provision rendered the concession revocable by the Minister. The above section served as a basis to our present Sec. 35, which permits the owner of a Mining Concession to subdivide his land or to erect dwellings or other constructions without the obligation of subdividing the land. As to the holder of a lease, unless it was specified differently, he was allowed, as with the case of a holder of a claim or of a Development Licence, to construct

buildings which were necessary for his operation.

Sec. 34 of the Quebec Mining Act states that

> "Every owner of a Mining Concession whether followed or not by letters patent as well as every holder of a Development Licence or holder of a claim within the meaning of section IX of this Act, may, with the consent of the Minister, sell, assign, convey, or alienate his rights as owner or licensee. After the signing of the sale, assignment or transfer, he shall transmit an authentic copy or a duplicate thereof to the Minister, who shall, upon payment of a fee of $10.00, summarily register the same in a special register. Likewise, with the same consent, and with the same procedure, all transactions, such as promises of sale, agreements or other deeds affecting any land under claim or licence, or sold as a Mining Concession, may be registered. Every sale, concession, transfer or option, not so registered, shall be null as regards the Crown.
>
> Delay - The registration shall be effected within 30 days at the diligence of one of the parties interested. Any subsequent registration shall be valid, but only as regards subsequent transactions." R.S. 1925, Ch. 80, Sec;31; 1 Geo.VI, Ch. 41, Sec. 12

This is definitely contrary to Article 2099 of the Quebec Civil Code which declares that the

> "sale, lease or transfer of a mining right, if the title be authentic, is preserved and takes effect from its date by means of registration within sixty days of its date."

On the one hand, we have the 30-day period and on the other, the 60-day period. The Mining Rights mentioned in the Civil Code refer to real rights and not to personal rights as in the case of Mining Claims or Development Licences which are personal rights (rights against a person and not against the world).

McDougall, ibid cit., states at page 25 that Sec. 34

> "is very broad in its terms and if it stood alone could with reason maintain that it provides a complete code governing the rights of transferees of Mining Rights. However, in view of the conflict between the section and the general law of the Province which would follow from that theory of the intent and meaning of the section, one is almost forced to the conclusions that it goes no farther than to govern the rights of acquirers of Mining Rights against the Crown and the respective rights of contesting claimants merely in their relation to the Crown."

The contradiction in these two sections can only be solved by an amendment. In the meantime, the transferee of a Mining Concession should have his transfer effected by an authentic deed within the 60-day delay and have same registered in the qualified Title Office so as to satisfy the general law of the Province. He should also conform, so as to be on the safe side, with the provisions of the Mining Act where it applies.

Consequently, between the Department of Mines and the individual we have a 30-day delay, while between the individual and third parties, the civil law applies the 60-day delay.

CHAPTER IV

MINING TAXATION

SECTION 1 - QUEBEC TAX LEGISLATION

The Provinces in Canada derive their right to tax from Section 92 of the British North America Act in which it is stated that the Provinces are permitted

> "direct taxation within the Province in order to the raising of a revenue for Provincial purposes." (1)

John Stuart Mills in his volume, Principle of Political Economy, defines a direct tax as "one which is demanded from the very person who it is intended or desired should pay it." Nowadays, a direct tax is considered as one which a purchaser cannot or only with great difficulty pass on to another person.

In Newfoundland, Nova Scotia, and New Brunswick, a royalty is paid to the Government for the use of the natural resources and this royalty varies with the estimates placed on the replacement value of the objects used or destroyed. The Provinces vary in their royalty charges for the cutting of timber, and extracting of minerals on Crown property. New Brunswick charges 9-¢ a ton for coal while Nova Scotia obtains 35¢ an ounce for gold, 2¢ an ounce for silver, and 12½¢ per long ton of coal. The Provinces are completely within their legal rights in charging a royalty for the use or consumption of their natural resources.

(1) As quoted there would definitely appear to be a word missing.

Ontario, Manitoba, Saskatchewan, Alberta and British Columbia have a Mining Tax Act by which they tax the net profit derived from the produce of the mines situated within their provincial limits. As long as their tax conforms with the "direct taxation" definition, they are free to tax the income of mining companies. Quebec is similar to Ontario and Manitoba in that there are no royalty charges and the revenue is derived from a duty or mining tax.

At the present time, all the Provinces with the exception of Quebec, have signed or are about to sign agreements with the Federal Government whereby the taxation rights of the Provinces are "rented" to the Federal Government. These agreements vary only in a few minor points and are for a 5-year period commencing April 1st, 1952, and terminating on March 31st, 1957. These agreements, however, do not take away from the Provinces the rights to impose mining and logging taxes and to collect royalties and rentals.

A) Duties upon Mines

From the Act 14 Geo.V, Ch. 37, 1925, stems the basis for our present Section on Mining Duties. Section 2105a thereof states:

> "From and after the 1st of January, 1925, saving the exception hereinafter established with respect to asbestos mines, every mine in the Province of Quebec shall be liable for, and the owner, manager, holder, lessee, occupier or operator of the mine, shall pay the following duties:

A) Upon annual profits in excess of $10,000.00 up to $1,000,000.00 ... 3%
B) On the excess above $ 1,000,000.00 up to $ 5,000,000.00 ..... 5%
C) On the excess above $ 5,000,000.00 up to $10,000,000.00 ..... 6%
D) On the excess above $10,000,000.00 up to $15,000,000.00 ..... 7%
E) On the excess above $15,000,000.00 or a proportional increase of 1% for each additional $5,000,000.00"

By the 1880 Act, 43-44 Vict., Ch. 12, Sec. 16, a duty of 3% was payable on the amount of ore obtained by the person, firm or company interested in the ore being developed.

A duty of 3% on the merchantable value of the products was made payable in the case of iron, copper, nickel and cobalt, manganese, antimony, gold, including alluvial gold, mercury, tin and amiantus mines, while a duty of 2½% of the gross weight was chargeable on that gold which was valued at $18.00 per ounce and on silver (1890, 54 Vict., Ch. 15).

As to asbestos mines, the duties were higher and for an annual profit of up to $500,000.00 a duty of 3% was paid, while on the excess above $500,000.00 up to $1,000,000.00 a duty of 5% was payable, and on the excess above $1,000,000.00 a duty of 8% was collected. Asbestos duties originally (1910, 1 Geo.V, Ch. 17, Sec. 5) were left to the discretion of the Mining Inspector who, in imposing the duty, was to consider the quantity and value of the asbestos produced and deduct whatever costs of extraction and treatment he considered just and reasonable.

Our present law has increased the duty from 3% to 4% on that profit in excess of $10,000.00 but less than $1,000,000.00 and the duty now exacted on the amounts above $1,000,000.00 is as follows:

On the excess above $1,000,000.00 up to $2,000,000.00 ..... 5%
On the excess above $2,000,000.00 up to $3,000,000.00 ..... 6%
On the excess above $3,000,000.00 ..... 7%

The special taxation clause as to asbestos mines is no longer in the law. The Quebec Mining Act so as to encourage the treatment of minerals extracted from provincial lands, has inserted a provision that allows the Lieutenant-Governor in Council to exact from the owner, holder or operator thrice the amount of duties mentioned above if they are removed outside the Province to be treated. The same threefold duty is payable if the minerals are treated in the Province of Quebec in a smelter, mill or refinery, the situation whereof has not been approved by the Lieutenant-Governor in Council. This allows the Department to investigate the sites chosen and thereby protect the general public. It is thought that this legislation was introduced by a large Mining Company in the Noranda district so as to put an end to bothersome actions.

To simplify the taxation thereof, all mines belonging to or controlled by the same individual or individuals are considered as one for the purpose of determining whether or not a liability exists for the payment of duties.

To determine the net annual profit, the operating costs and expenses are deducted from the gross annual value of the year's output which is sold, utilized or shipped.

Amongst the more important deductions and expenses which are allowed are the following: the cost of transporting the output of the mine, providing that such cost is borne by the operator of the mine; the working expenses of the mine, including the wages of the employees, the cost of the necessary power and light for the operation of the mine, mill and plant costs of explosives, insurance depreciation on buildings and equipment at a rate not exceeding 15%; the cost of sinking new shafts, making excavations and workings and trenching in or upon the mining property, with a view to operning up or testing for minerals, and by discretion of the Lieutenant-Governor in Council, a deduction for prospecting expenses. There is no allowance for depletion.

By an amendment to the Act in 1909, 15 Geo.V, Ch. 37, Sec. 2105c, it was ordered that no allowance or deduction shall be made for the cost of new installations or new buildings made or erected during the year, nor for depreciation in the value of the mine, by reason of exhaustion or partial exhaustion of minerals.

The duties payable to the Crown become due on the first day after the close of the operator's financial year, and are payable within the 5 months immediately following the end of such year and these amounts due are a privileged claim against the property of the debtor.

The Quebec Mining Act (Sec. 50) also provides that all mining land and underground mining concessions sold, which have not been

patented on the expiration of the delay of two years, and those the letters patent whereof have been issued after the 1st of July, 1911, are subject to an annual tax of 10¢ per acre. This tax is, however, remitted if at least $200.00 have been spent in mining work upon the concession during the year.

The Quebec Corporation Tax Act (11 Geo.VI, Ch. 33) imposes an annual tax of 7% on the net revenue of all incorporated companies, partnerships, business houses and persons contemplated by the Act and which have a head office or one office in the Province or which are carrying on business therein. The tax is also imposed on the following companies whether incorporated or not: banks, insurance, loan, navigation, telegraph, telephone, express, tramway, railway, sleeping and parlour car, trust, gas and electric, gasoline, real estate, liquor, brewery and tobacco companies. All mining companies which are taxed under the Quebec Mining Act (R.S.Q., 1941, Ch. 196) are exempt from the above tax but are liable for the tax on paid-up capital and place of business.

The Quebec Corporation Tax Act imposes on all companies, including mining companies, unless specifically excepted in the Act, a tax on paid-up capital at the rate of one-tenth of 1%. Paragraph "d" of Section 4 of the Corporation Tax Act, in special cases, allows the Lieutenant-Governor in Council, upon the recommendation of the Provincial Treasurer, to fix at a sum less than that prescribed by Section 3 of the

Act, the tax payable on capital of any company "being a mining company which has not reached the production stage." In virtue of Order-in-Council No. 1499 (the French translation is No. 1592) of October 2nd, 1947, it was ordered:

> "That the Comptroller of Provincial Revenue be authorized to fix the capital tax payable by all the above-mentioned companies according to the following tariff:

			Capital Tax
Paid-up Capital of	$ 10,000.00 to	$ 299,999.99	$ 5.00
	300,000.00 to	599,999.99	10.00
	600,000.00 to	999,999.99	15.00
	1,000,000.00 to	1,999,999.99	20.00
	2,000,000.00 to	3,000,000.00	25.00
Each additional million or fraction thereof			5.00"

As defined in the Act 11 Geo.VI, 1947, Ch. 33, Sec. 2, "Paid-up Capital" means and includes:

> "a) the paid-up capital stock of the company, comprising ordinary and preferred stock;
>
> b) its surplus and reserve funds except any reserve for ordinary wear and tear, the creation of which is allowed as a charge against revenue under this act;
>
> c) all indebtedness of the company, whether assumed or undertaken by the company, represented by bonds, mortgages, debentures, income bonds, income debentures, liens, notes and any security to which the property of the company is subject;
>
> d) every other indebtedness of a capital nature;
>
> e) every other undivided interest or other participating interest, in the nature of capital stock such as "units", "trustee shares", or "trustee certificates" and the like."

However, Mining Companies are permitted to deduct the discount on the capital stock.

B) Tax on Place of Business

A Place of Business Tax of $50.00 for each place of business in the Cities of Montreal and Quebec and of $25.00 for each place of business situated in any other Municipality is levied by the Provincial Government. However, if the paid-up capital of the company is under $25,000.00, the tax is reduced to $25.00 for each place of business in the Cities of Montreal and Quebec and $20.00 for each place of business in any other Municipality.

The Quebec Authorities presently consider that a Company is doing business in the Province of Quebec if there is an employee or an agent in the Province. The Company's representative need not be domiciled or a resident of Quebec. As long as the person located in Quebec is taxed directly, the tax is legal.

Doing business in this Province means

> "exercising any of the corporate rights, powers or objects of a company or possessing any property in the Province or having therein a place of business within the meaning of this Act".

C) Sales Tax

The Provincial Sales Tax payable by producing Mining Companies and non-producing Mining Companies differ. The Provincial Sales Tax is presently 2% of the purchase price. Producing Mining Companies which are selling and delivering in the Province as well as outside the Province

of Quebec pay the Provincial Sales Tax on purchases made for their own use or consumption on the proportion of their sales or deliveries in the Province to the total sales of their establishments situated in the Province. This proportion is never less than 20%.

Order-in-Council No. 461, dated May 5th, 1949, states:

"For the purpose of establishing the above proportion, the following rules must be followed:

(1) When a sale is made to a purchaser domiciled in the Province, with stipulation that the delivery will be made outside the Province, this sale is considered as a sale made within the Province;

(2) When a sale is made to a purchaser domiciled outside the Province, with stipulation that the delivery will be made in the Province, this sale is considered as a sale made within the Province;

(3) When a sale is made to the Dominion Government, to a Crown Company, to a company controlled by the Dominion Government or to any agency of the Dominion Government, the sale is considered as a sale made within the Province. The sale of gold bullion to the Dominion Government is considered as made outside the Province, as long as mining companies shall be obliged to sell this metal to the Dominion Government. This provision comes into force as from the 28th February, 1945;

(4) When a sale is made F.O.B. Quebec to outside companies, and when the merchandise is shipped without the Province, this sale is considered as a sale made without the Province, even if the contract of sale if made within the Province;

(5) When a sale is made to a subsidiary company selling only the products manufactured by its parent or principal Company, this sale is considered as a sale made without the Province, if the merchandise is shipped without the Province."

Non-producing Mining Companies are those companies which have not reached the stage of production for the market at the expiration of their last fiscal year ended on or before April 1st and they may pay the tax on purchases made for their own use or consumption on a fixed basis of 20% of the value of such purchases.

Companies which are operated as subsidiaries of mining companies are completely separate entities from a Sales Tax viewpoint and must file a separate return. For the purpose of the Sales Tax Act, a "subsidiary company" means a company of which more than 50% of the issued share capital is held by a parent company or of which 50% of the voting power is in the hands of the parent company, or a company of which the parent company has power directly or indirectly to appoint the majority of directors. A list of moveables exempted from the sales tax is contained in the Retail Sales Tax Act.

D) Municipal Valuation of Taxable Mining Property

In valuing taxable property in a municipality where there is land containing mines which are being worked, the assessors must value such real estate without regard to the increased value caused by the existence of the mines or minerals, etc.; but no such mining property, even if on the surface may, however, be subject to taxation during the first 5 years from the commencement of such working or from the resumption after a discontinuance of five consecutive years (Sec. 226, Quebec Mining Act).

SECTION 2 - DOMINION TAX LEGISLATION UP TO 1953

In general, the income taxed is determined in accordance with generally accepted accounting principles governing the calculation of net profit. In this connection, however, expenditures not made for the purpose of earning income, capital outlays, amounts transferred or credited to a reserve, except for a reasonable reserve for bad debts or as a reserve for depreciation as allowed under the Act, are not generally considered as deductible costs.

In 1949, the tax rates for corporations were established at 10% on the first $10,000.00 of taxable income and $1,000.00 plus 33% on the excess of taxable income over $10,000.00. In 1950, these rates were increased to 15% and 38% and applied to those profits earned after September 1st, 1950, and in 1951, the 38% was increased by means of a 20% surtax to 45.6% on profits earned after December 31st, 1950. In 1952, the rate was:

a) 20% of the amount taxable, if the amount taxable did not exceed $10,000.00 and

b) $2,000.00 plus 50% of the amount by which the amount taxable exceeds $10,000.00, if the amount taxable exceeds $10,000.00.

A 2% Old Age Security Tax is to be added to the above for the year 1952.

A) 3-Year Tax Exemption for New Mines

Section 74 of the Act reads as follows:

"(1) Where a corporation establishes that a mine was
(a) a metalliferous mine, or
(b) an industrial mineral mine certified by the Minister of Mines and Technical Surveys to have been operating on mineral deposits (other than bedded deposits except sylvite),
that came into production of ore prior to the end of the 1955 calendar year, income derived from the operation of the mine during the period of 36 months commencing with the day on which the mine came into production shall, subject to prescribed conditions, not be included in computing the income of the corporation.

(2) In this section, "production" means production in reasonable commercial quantities."

The above 3-year period becomes in practice a 3½ year period for the Department considers the mine in question as "coming into production of ore in commercial quantities" on a date not exceeding six months after the day when commercial milling operations are started at the mine, or, if the ore is not processed at the mine, six months after the date when the mine commences to ship ore.

The prescribed conditions are:

1) The corporation shall maintain separate accounting records of the mine:

a) for a period from the commencement of operation of the mine by the corporation to the day before that on which the mine came into production, and

b) for each fiscal year of the corporation which includes a part of the 36 months beginning with the day the mine came into production;

2) If the operation of the mine was the only business carried on by the corporation on the day before that on which the mine came into production, the corporation shall end its fiscal year and close its books of accounts as of that day;

3) If (2) above, does not apply, the corporation shall close its accounting records in respect of the mine at a date 36 months after the day the mine came into production, and

4) The corporation shall file a return in duplicate with the Minister of National Revenue on Form T-351 entitled, "Application for Exemption of Mines".

The dividends paid by a Mining Company are always taxable income except in the hands of a Canadian Company when received from a Canadian Company.

B) Prospectors' Exemptions

The Income Tax Act was amended on June 30th, 1950 (1950 Statutes, Chap. 40), so as to exempt from income tax certain amounts received by the Prospectors or those persons who financed the Prospectors:

"Resolved - That for the 1949 and subsequent taxation years, there shall not be included in computing amounts in consideration for mining properties by Prospectors who have prospected, explored or developed the properties, or by persons who have financed Prospectors to do so, other than persons who carry on the business of dealing with the public in shares or securities or who dispose of the shares after carrying on a campaign to sell them to the public."

In Canada, the Government has never taxed the Prospectors on any profits made as a result of their selling their mining properties; C.C.H. Canadian Tax Reporter, Sec. 13-865, states:

"Prior to the enactment of this section there was no statutory provision relating to income derived by Prospectors, their associates and employers from the sale of mining properties or of shares of a corporation received in consideration for mining properties disposed of to such corporation, However, the practice of the Income Tax Department under the Income War Tax Act has been to consider profits from such sales as capital gains which are not subject to tax. A 1941 ruling under the Income War Tax Act described the exemption in some detail. The Minister of Finance said in the House on the 18th May (Hansard, page 2630) "There is no intention in this section to change in any way the practice which had prevailed since 1941". This treatment in effect afforded exemption from tax to a particular class of taxpayer to which it was desired to offer an incentive, since under the general law such proceeds might ordinarily have been considered to be taxable income."

In was however held in McDonough vs Minister of National Revenue (49 D.T.C.), that where a Prospector, in virtue of an agreement, purchased shares in a Mining Company which was the amalgamation of other Mining Companies which he later sold at a profit, the profit was taxable, since he had to sell the shares to collect the purchase price. It was decided that the profit did not arise from his own capital investment

and that what he was doing could be termed as business. Sections 73B (2), 73B (3) and 73B (4) of the Act read as follows:

"Sec. 73B (2) - An amount that would otherwise be included in computing the income of an individual for a taxation year shall not be included in computing his income for the year if it is the consideration for
(a) a mining property or interest therein acquired by him as a result of his efforts as a prospector either alone or with others, or
(b) shares of the capital stock of a corporation received by him in consideration for property described in paragraph (a) that he has disposed of to the corporation.

Sec. 73B (3) - An amount that would otherwise be included in computing the income for a taxation year of a person who had, either under an arrangement with the prospector made before the prospecting, exploration or development work or as employer of the prospector, advanced money for, or paid part or all of, the expenses of prospecting or exploring for minerals or of developing a property for minerals, shall not be included in computing his income for the year if it is the consideration for
(a) an interest in a mining property acquired under the arrangement under which he made the advance or paid the expenses, or, if the prospector was his employee, acquired by him through the employee's efforts, or
(b) shares of the capital stock of a corporation received by him in consideration for property described in paragraph (a) that he has disposed of to the corporation.

Sec. 73B (4) - Paragraph (b) of subsection two and paragraph (b) of subsection three do not apply:
(a) in the case of a person who disposes of the shares after carrying on a campaign to sell shares of the corporation to the public, or
(b) to shares acquired by the exercise of an option to purchase shares received as consideration for property described in paragraph (a) of subsection two or paragraph (a) of subsection three."

If the Prospector is working for a Mining Company, the terms of his contract will have to be drafted so as to satisfy the dictates of Sec. 73B (2). The exemption also applies to the person who has advanced money for or paid part or all of the expenses of prospecting or exploring for minerals or developing a property for minerals. Amounts received in consideration for

a) an interest in a mining property acquired by such employer through the employee's efforts, or

b) in consideration for shares of a corporation which were in turn received by him in consideration for such a property

are excluded from his income.

A corporation or an individual can be the financial backer of the Prospector, while a corporation cannot be a Prospector. Sec. 10-225, C.C.H. Canadian Tax Reporter, page 1150, states the following:

> "Prospecting for mineral claims is a full-time occupation, and one might imagine that the administration would be justified in holding a Prospector assessable on the profits he derived from his occupation. But Prospectors have never been taxed in Canada or any profits or gains derived from discovering and selling mineral claims or mineral leases."

C) Deductions

I - Prospecting, Exploration and Development Expenses

A company whose principle business is that of mining or exploring for minerals may deduct, in computing its income for a taxation year, the lesser of

a) all prospecting, exploration and development expenses incurred by it directly or indirectly, in searching for minerals in Canada

   1) during the taxation year, and

   2) during previous taxation years, to the extent they were not deductible in computing income for a previous year, or

b) the total expenses up to an amount equal to its income for the current fiscal year

   1) if no deduction were allowed for depreciation, and

   2) if no deduction were allowed under this subsection, minus the deduction allowed in respect of dividends received from other companies; if

      i) it has filed certified statements of such expenditures, and

      ii) it has satisfied the Minister that it has been actively engaged in prospecting and exploring for minerals in Canada by means of qualified persons and has incurred the expenditures for such purpose.

The above provisions as drafted do not apply to individuals but only to corporations whose principle business is that of mining or exploring for minerals.

In American Metal Co. of Canada Ltd. vs Minister of National revenue, 1952, C.C.H. Dominion Tax Cases, page 1180, it was held that a company, who purchased and sold minerals valued at well over $40,000,000.00 per year and whose exploration business was at all times of a minor nature, could not deduct a certain portion of its exploration expenses.

The General Tax Rate for 1952 on corporations is 20% on the first $10,000.00 of taxable income and 50% on the taxable income over $10,000.00. To the above must be added for the year 1952, an Old Age Security Tax of 2% on the taxable income of corporations under Part 1 of the Act. The tax is charged against the income which may be defined as the net profit realized from production plus the net income from other sources including dividends, rentals, interest, etc. All expenditures incurred in the obtaining of the income are deducted from the gross income of the company. Deductions for depreciation, depletion, pre-production expenses, and a portion of the taxes on income for the year paid to a Province or Municipality upon mining operations development are also allowed.

It was held in the case of Pickle Crown Gold Mines Limited vs Minister of National Revenue, 1953 D.T.C., that where the appellant, a Mining Company, had purchased assets from another Mining Company who in turn had purchased these assets from a third Company which had no connection with the appellant Company, that the appellant had no right to claim as an expenditure the amount set up by the third Company for

development and exploration expenses as the connection between it and the third Company who had incurred the expenditures was too remote.

II - Depreciation

Buildings, plant and equipment were allowed a depreciation of up to 15% of the cost per annum under the Income War Tax Act. This rate has been increased for those buildings purchased or built for the purpose of producing income from the mine (those buildings that are not on the mines are excluded) and are depreciated at a rate of up to 30% of the undepreciated capital cost. Mining machinery and equipment are also depreciated at the rate of up to 30%. However, machinery and equipment situated in a refinery cannot be written off at more than 20%. A refinery is not classed as a mine building and is to be written off at a rate not exceeding 5% if it is built of brick or stone and at a rate not exceeding 10% if it is of frame construction. Under the Income War Tax Act, depreciation was on a straight line basis, while under the Income Tax Act it is on a diminishing balance basis.

III - Pre-Production Expenses

A taxpayer may deduct from the income received during the year an amount up to 25% of the aggregate of the pre-production expenses incurred before the mine came into production. This deduction applies to coal, base or precious metal mines or an industrial mineral mine -

non-bedded deposits. The 25% deduction is calculated on the total pre-production expenses and can be fully written off.

The expenses allowed do not include:

a) the cost of properties subject to an allowance for depreciation, and

b) any expense charged against the income of the taxpayer in the year of expenditures, and

c) the cost of a leasehold interest.

IV - Depletion

Mining Companies in Quebec as in the other Provinces are subject to the same federal taxes as other Canadian Companies, but they are granted specific deductions from income for depletion due to the fact that the profits result from the gradual exhaustion of a natural resource.

John G. McDonald, in his article, Preferential Taxation of the Natural Resources Industries in Canada (1), states:

> "When the owner of an interest in a mine or an oil well receives a return on his investment, in the form of profit, dividend or otherwise, a portion of his receipt represents conventional profit and the remainder is a partial refund of his original capital. This follows from the apparent fact that the source of his revenue is exhaustible. Accordingly, the equities of taxation require that gross income derived from such source be subject to an appropriate deduction designed to permit recoupment of capital by the taxpayer. Since 1917 this has been done. The means of its accomplishment has been the depletion allowance, and the method of its accomplishment

(1) "The Canadian Bar Review", February 1952, page 119.

has been the percentage of net income deduction without limitation to capital cost. Although most industrial taxpayers pay approximately one half of their net income to the government each year, the natural resources industries are entitled to a perennial percentage deddction from net income before computation of tax."

Depletion is allowed by the Federal Government so as to compensate for the loss suffered by the mine physically every year as the result of its being worked. Depletion is deducted after allowing for all operating costs, depreciation, prospecting expenditures, pre-production expenses.

In virtue of the 1946 Statute, Ch. 44, Sec. 4 (1), provisions were made to replace the administration's right to settle depletion allowances. As a result, base and previous metal mines were allowed a 33-1/3% depletion on net profits. In 1948, an annual depletion of 33-1/3% was granted for industrial minerals found in non-bedded deposits.

The present depletion rate allowed to base metal and precious metal mines, gold mines excepted, and industrial mineral mines operating in non-bedded deposits is 33-1/3% of the profits for the year attributable to the production of metals, minerals. Mines whose output is 70% or more from gold may, instead of the 33-1/3% deduction allowed to other mines, deduct the greater of

a) 40% of the net profits from the sale of metals, or

b) $4.00 per ounce of gold produced in the year.

In the case of coal mines, the deduction allowed is 10¢ per ton of coal mined in the taxation year.

For industrial mineral mines (except coal mines), in respect of which the Minister of Mines has not certified the mine is contained in a non-bedded deposit, the amount claimed in respect of the capital cost of the mine may not exceed the amount computed on the basis of a rate per unit of mineral mined in the taxation year. The operator may deduct for depletion an amount sufficient to permit the recovery of the capital cost of the mining property or right less residual value over the productive life of the deposit, i.e. the allowance in respect of each fiscal period will be determined by dividing the capital cost of the mining property or right, less residual value, by the total number of units of commercially minerable material indicated as contained in the property and applying the rate per unit thus obtained to the units produced in the fiscal period under consideration. If the number of units of commercially minerable material in the deposit varies from the estimate originally submitted, the unit rate may be adjusted with the permission of the Minister of National Revenue. In small cases, where information is obtainable only with great difficulty, the Company may claim a deduction for a tax year of $100.00 or the full amount received from the sale of the minerals, whichever is the smaller.

V - Other Deductions

The Province of Quebec imposes a corporation income tax of 7% on corporations which are doing business within its boundaries and which

is not considered as a deductible item under the Federal Act.

From the tax of 20% and 50% paid to the Federal Government as a Corporation Tax, an amount of up to 5% of the Company's income earned in Quebec may be deducted from the Federal Tax by Quebec companies. With the exception of this 5% credit and a few other exemptions laid down by regulations such as capital stock and place of business taxes, no other amounts paid in satisfaction of provincial taxes are deductible. However, Mining and Logging Companies are an exception to this rule (Sec. 11, Sub-sec. 1, par.(n).

VI - Taxes paid by a Mining Company to the Government of a Province on income derived from Mining Operations are deductible within certain limits.

In virtue of regulations issued under the above (Part VII Sec. 700), a Mining or Logging Company may deduct from its income that proportion of the total provincial income tax or municipal tax paid in lieu of property tax that the Mining or Logging income is to the total income on which such taxes were paid.

The term "Income derived from Mining Operations", used above, means the net profit or gain derived or deemed to have been derived from mining operations by a person engaged therein with or without an allowance in respect of depletion and if such a person receives net profits or gain from sources other than mining operations either by reason of the carrying on by him of the processing of mineral ore extracted by him or

otherwise, the net profit or gain to be deemed to have been derived by him from mining operations shall not exceed that portion of the total net profit or gain received by him from all sources, determined by deducting from the said total:

1) returns from investments (dividends, interest, etc.);

2) profits or gain derived from any business other than mining and the processing and sale of mineral ores or products produced therefrom;

3) an amount equal to 8% of the capital invested in treatment, plant buildings, works and improvements, etc. This deduction, however, not to exceed 65% of the profits remaining after deducting amounts specified in sub-paragraphs 1 and 2. In the case of Mining Companies or individuals who mine and smelt mineral ores from which metals other than gold, silver or platinum or recovered in amounts exceeding in value 5% of the total value of the metals recovered, the amount deductible shall not be less than the following proportion of the profits remaining deducting the amounts specified under sub-paragraphs 1 and 2 above:

a) where both copper and nickel are recovered, each in amounts greater than 5% of the total value of metal recovered 40%

b) where both lead and zinc are recovered, each in amounts greater than 5% of the total value of metal recovered 30%

c) where both copper and zinc are recovered, each in amounts greater than 5% of the total value of metal recovered 20%

d) in other cases 15%

VII - Shareholders' Depletion Allowance on Mining Dividends

Sec. 11 (2) of the Act allows the shareholders of a Mining Company, resident in Canada, who receive dividends from a Company carrying on business in Canada, the income from which include mineral profits, a deduction of from 10% to 20% depending on the proportion of the mineral profits of the Company. "Mineral Profits" include dividends received by the Company from other companies, the mineral profits of which are not less than 75% of their income.

As to non-resident individuals or companies (other than parent companies), a tax of 15% is imposed and collected at the source on all dividends and a tax of 15% is also collected on all royalties paid to the above individuals and companies in respect to the use of property (other than real estate) in Canada. In both cases, there is no allowance for depletion.

SECTION 3 - DOMINION TAX LEGISLATION FOR 1953

The Mining Industry will profit from the recently proposed amendments to the Income Tax Act. The corporation tax rate as proposed has been reduced for the year 1953 from 20% on the first $10,000.00 and

50% on the excess to 18% on the first $20,000.00 and 47% on the excess. The 2% Old Age Security Tax is to be added to the above. The special allowances granted Mining and Oil Companies for exploration expenses, new mine development, etc. are to be extended to include the 1956 taxation year. Mining Companies are also allowed to deduct oil or gas exploration expenses and bonus payments made to a Government for unproductive leases in the year of the abandonment of the lease. The above oil or gas deductions seem to favor the Mining Companies which are presently investing funds in oil or gas lands.

As suggested, Sec. 37, sub-sec. 1 of the Act is amended so as to allow the Quebec Corporations to deduct 7% of their taxable income earned in the Province instead of the previous 5%. This credit, however, applies to taxes paid on income earned within the Province and this apparent advantage will depend on whether the Quebec Government decides to tax all profits of companies with a head office in Quebec or only the profits earned in the Province. The above 7% credit, however, does not apply to Mining and Logging Companies which are not paying the ordinary corporation tax. These Companies shall remain at the 5% credit rate but they are allowed to deduct as expenses the total taxes paid to the Provincial Government.

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